
(2011) 03 MAD CK 0280
In the Madras High Court
Case No : C.R.P. (NPD) No. 105 of 2000

S. Rasool Mohideen

APPELLANT

Vs

Bashyam Reddy and Co. and United India Insurance Co.

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Article 137
Motor Vehicles Act, 1988 — Section 140, 166, 166(3)

Citation : (2011) 2 LW 138

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : M. Abdul Nazeer, for the Appellant; K.S. Narasimhan, for R2, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—This Revision has been filed under Article 227 of Constitution of India, assailing the correctness of the order dated 12.04.1999 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate-cum-Additional District Judge, Chingleput) in I.A. No. 25/99 in M.C.O.P. No. 348/95.

2. The claimant is the Petitioner and the first Respondent is the owner of the vehicle and the second Respondent is the insurer. The Petitioner filed M.C.O.P. No. 234 of 1990, under Sections 166 and 140 of the Motor Vehicles Act, 1988, (hereinafter referred to as the "Act") claiming compensation of Rs. 1,00,000/- for the injury sustained by him, on account of a motor vehicle accident on 12.11.1989, at about 6.30 p.m. on G.S.T. Road at Erattaimalai, Acharapakkam. On account of the accident, the Petitioner sustained injuries, namely, shortening of right leg, abrasion over the forehead, laceration on the right side of the cheek, shortening of right limb and several other lacerations all over the body. On account of the accident, the Petitioner became permanently disabled and unable to walk and could not carry on his profession as driver. Further, it is stated that

the accident has occurred solely due to the rash and negligent driving of the Tanker Lorry.

3. The Insurance company resisted the claim petition, inter alia contending that the accident has occurred only due to the rash and negligent driving of the van driven by the Petitioner, without observing the traffic rules. The Insurance company also denied the quantum claimed as being excessive. It appears that the claim petition was dismissed for default on 20.11.1995.

4. According to the Petitioner, he came to know that the claim petition was dismissed for default only when he contacted his counsel on 02.01.1998. Therefore, he made an application to restore the claim petition by condoning the delay of 747 days in filing such application. In the affidavit filed in support of the petition, it was stated that on account of the injury sustained by the Petitioner in the road accident, he was continuously taking treatment and could not contact his counsel and he was also unable to travel and he was informed by the owner of the vehicle, his employer, that he would take care of his case, but unfortunately, the Petitioner did not receive any information and subsequently, he shifted his residence and did not intimate the change of address to the lawyer and after the accident, he was also removed from his service and he has incurred huge expenditure for treatment and that if the claim petition is not restored, he will put to loss and hardship.

5. The Insurance company stated that the reasons given by the Petitioner is not sufficient to condone the inordinate delay of 747 days and in the event, the Tribunal allows the application and condones the delay, the Petitioner should be entitled to get interest only from the date of restoration.

6. The Tribunal by its order dated 12.04.1999, dismissed the application for condonation by holding that the reason assigned by the Petitioner is vague and is not sufficient to condone the delay of 747 days. Aggrieved by such order, the Petitioner has filed the present revision petition.

7. Heard the learned Counsel appearing for the Petitioner and the learned Counsel appearing for the second Respondent and perused the materials available on record.

8. The only issue, which falls for consideration in this revision is as to whether the Tribunal has justified in rejecting the application of the Petitioner to condone the delay of 747 days for restoration of the claim petition.

9. The law of limitation is founded on public policy and not meant to destroy the rights of parties, but to see that the parties did not resort to dilatory tactics.

10. In the instant case, the claim petition is filed u/s 166 of the Motor Vehicles Act, claiming compensation for the grievous injuries sustained by the Petitioner in a motor accident resulting in permanent disability.

11. By virtue of the Motor Vehicles (Amendment Act) 1994, which came into

force w.e.f 14.11.1994, Sub-section 3 of Section 166 of the Act, has been omitted, thus w.e.f. 14.11.1994, there is no limitation for filing claims before the Tribunal in respect of any accident. This amendment was due to the fact that at many times, the claimants are the legal representatives of the accident victims are put to great loss and hardship, as their claim petition was rejected on the ground of limitation. In fact the Hon''ble Supreme Court in Dhannalal Vs. D.P. Vijayvargiya and Others, , held that it is a matter of common knowledge that majority of the claimants are ignorant about the period of limitation and after the death of the breadwinner in an accident, claimants are the virtually on the streets and in the cases where the victims escape death they are hospitalized for years and therefore, the Parliament rightly thought that prescribing a period of limitation was harsh, inequitable and in many cases likely to cause injustice to the claimants. In the same judgment, the Hon''ble Supreme Court also took note of the fact that though the Amending Act did not delete the Sub-section 3 of Section 166 retrospectively, there is nothing in the Amending Act to show that the benefit of deletion of Sub-section 3 is not to be extended to pending claim petitions. Therefore, the Hon''ble Supreme Court held that such claim petition cannot be thrown out on the ground of being barred u/s 166(3) of the Act, when it was in force. The decision of the Hon''ble Supreme Court in Dhannalal, referred supra, was followed in another decision of the Hon''ble Supreme Court in The New India Assurance Co. Ltd. Vs. C. Padma and Another, , in the said decision, the Hon''ble Supreme Court while considering the effect of deletion of Sub-section 3 of Section 166 of the Act, held that the Article 137 of Limitation Act cannot be invoked because the Motor Vehicles Act is a beneficial legislation and is a self contained Act which prescribes the mode of filing the application, procedure to be followed and award to be made and since, the object is to give effective relief to the victims and the families of the motor accidents untrammelled by the technicalities of the limitation and by invoking Article 137, would defeat the intendment of the legislature.

12. In the case on hand, the Petitioner who became permanently disabled on account of a road accident, filed the claim petition within the period of limitation under the preamended Section 166 and the claim petition was pending and a counter affidavit was also filed. According to the Petitioner, as he was continuously taking treatment, he could not contact his counsel. According to the Insurance company, the reasons given by the Petitioner does not connote sufficient cause for condonation of delay. Yet, the Insurance company has taken a stand that if the delay is condoned and the petition is restored and in the event an award being passed, the Petitioner should be entitled to interest only from the date of such restoration.

13. It is true that the delay is enormous being 747 days. The Petitioner has not given specific dates and events, which prevented him from contacting his counsel from more than two years, after the petition was dismissed for default. Yet one thing should not be lost sight of in the instant case is that the case on hand is a motor accident claim petition and the Petitioner at the time of accident was

employed as a driver, on account of the injuries sustained in the accident, he became permanently disabled and he was also dismissed from service by his employer and on account of the shortening of the limb, the Petitioner is unable to do work as a driver and he has been put to great loss and misery. These averments made by the Petitioner have not been denied by the Insurance company.

14. Bearing in mind the fact that on the date when the claim petition was dismissed for default i.e., on 20.11.1995, Sub-section 3 of Section 166 of the Act was deleted and there was no limitation for filing fresh claim petition as on such date. The Hon''ble Supreme Court while interpreting the object of Section 166 being to give relief to the victims, observed that such relief should be granted untrammelled by the technicalities of limitation. Further, the Hon''ble Supreme Court in Mahendra Rathore Vs. Omkar Singh and Others, , condoned the delay in filing a petition for restoration of a claim petition on the ground that the statement made by the claimant on oath remained uncontroverted and the Hon''ble Supreme Court held as follows:

4. ...The Applicant's own statement on oath remained uncontroverted. In such matters a justice oriented approach, and not a too technical or pedantic approach is expected to be adopted by Courts more so when the application sought to be restored for hearing was a claim case arising out of a motor accident. Refusal on the part of Tribunal to restore the claim petition, as also on the part of High Court to show indulgence to the Appellant has occasioned failure of justice. The Tribunal could have put the parties to terms to meet the ends of justice but should not have refused to restore the claim petition.

15. Thus by considering the facts of the present case and applying the law laid down by the Hon''ble Supreme Court in the aforementioned decision and in order to have a justice oriented approach, the only course which could be adopted is to condone the delay and to restore the claim petition filed by the Petitioner, any other order would not meet the ends of justice, as the claimant would be put to irreparable hardship. Yet, the objection raised by the Respondent, Insurance company cannot be brushed aside. As noticed above, the Insurance company stated that in the event the Tribunal condones the delay and passes an award, the Petitioner shall be entitled to interest only from the date of restoration. In fact the Hon''ble Supreme Court in the case of Mahendra Rathore, referred supra, observed that the Motor Accident Tribunal in the said case could have put the parties to terms to meet the ends of justice, but should not have refused to restore the claim petition. Therefore, in the instant case also, this Court is of the view that the condonation of delay and the restoration of the claim petition to the file of the Tribunal shall be made, subject to condition.

16. For all the above reasons, the delay of 747 days in filing the application for restoration of the claim petition is condoned and the claim petition is restored to the file of the Tribunal to be heard and decided on merits. In the event the Tribunal passes an award in favour of the claimant, while granting interest the

Tribunal shall take into consideration, the date of filing of the claim petition to 20.11.1995 and the date after which the claim petition is restored to the file of the Tribunal for the purpose of computing the period for which interest would be awarded. In other words, the period from 21.11.1995, till the date of restoration of the claim petition to the file of the Motor Accident Claims Tribunal, Chingleput, shall stand excluded for the purpose of grant of interest. This Civil Revision Petition is allowed on the above terms. No costs.