

(1967) 11 MAD CK 0035
In the Madras High Court
Case No : A.A.O. No. 55 of 1963

S. Thangavelu Pillai

APPELLANT

Vs

E.M. Mani (decd) and Others

RESPONDENT

Date of Decision : 20-11-1967

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A(3), 110D(1)

Citation : AIR 1969 Mad 316

Hon'ble Judges : Ismail, J

Bench : Single Bench

Advocate : P.S. Srisailam, for the Appellant; C. Ramaswamy, K.C. Jacob, S.K.L. Ratan and N. Thyagarajan, for the Respondent

Final Decision : Allowed

Judgement

Ismail, J.—This is an appeal against the order dated 11th July 1962 of the District Judge and Motor Accidents Claims Tribunal, West Thanjavur, dismissing the application filed by the petitioner appellant herein for excusing the delay in filing an application for payment of compensation. With reference to an alleged accident that took place on 6th October 1960, on 6th October 1961, the appellant herein instituted a suit for payment of compensation. That plaint was returned on 20th November 1961 for presentation to the proper forum and the appellant herein presented the same to the Motor Accidents Claims Tribunal. u/s 110-A (3) of the Motor Vehicles Act, the period of limitation prescribed for an application for compensation is sixty days and the proviso to that sub-section confers a power on the Tribunal to excuse the delay if it was satisfied that the applicant was prevented by sufficient cause from making the application in time.

The appellant herein, pursuant to this proviso, filed an application for excusing the delay. It is the common case of both sides that the Motor Accidents Claims Tribunal was constituted for the first time by the rules promulgated on 12th July 1961 and prior to that the forum for adjudication of any claim for compensation was the civil court and the period of limitation available in this behalf was one

year. According to the appellants, he was not aware of the promulgation of the rules of the 12th July 1961 constituting the Tribunal and therefore under the impression that he could approach the civil court within a period of one year, he presented the plaint on 6th October 1961. It is on that ground he applied to the Tribunal for excusing the delay. The Tribunal took the view that ignorance of law cannot constitute sufficient cause to enable it to excuse the delay. Hence the present appeal.

2. Learned counsel for the respondent took up a preliminary point to the effect that his appeal is not maintainable. It is Section 110-D of the Act which provides for an appeal and that section states that any person aggrieved by an award of a Claims Tribunal may prefer an appeal to the High Court. The contention of the learned counsel is, the order dismissing the application for excusing the delay is not an award so as to attract the scope of Section 110-D (1). As a matter of fact, the learned counsel went to the extent of contending that the main application for payment of compensation has not yet been dismissed because it has not been entertained at all. I am unable to agree with this contention. The effect of the dismissal of the application filed by the appellant to excuse the delay is the rejection of the application for compensation itself. Consequently, for all practical purposes, it can be taken that the application for compensation itself has been rejected.

Therefore, I am of the view that the present appeal is competent u/s 110-D (1) of the Act. As a matter of fact, this conclusion is supported by a decision of this court in *G. Gopalaswami Vs. G. Navalgaria and Others*, . Therefore I overrule the preliminary objection of the learned counsel for the respondent and hold that the present appeal is maintainable.

3. Coming to the merits, admittedly, the Tribunal was constituted only on 12th July 1961, and the period of sixty days provided for u/s 110-A (3) will commence only from that date. It is quite possible that the appellant thought that relation to an accident that took place prior to the constitution of the Tribunal, his remedy in the civil court remained unaffected by the constitution of the Tribunal and the period of limitation prescribed for the purpose of making an application to such a Tribunal. Under such circumstances, to reject the application of the appellant to excuse the delay on the ground that ignorance of law cannot constitute sufficient cause is to take an unduly narrow and technical view in this behalf. The peculiar circumstances relating to a new forum being introduced after the occurrence of the accident and the consequential belief that might be entertained by a person that in relation to an accident occurring earlier the old remedy is still available should be taken note of. This is what the Tribunal in this case failed to do. I consider that this is a proper case in which the Tribunal ought to have exercised its jurisdiction and excused the delay and should have dealt with the application for compensation on merits. Accordingly I allow this appeal and set aside the order dated 11th July 1962 and direct the tribunal to deal with the application for payment of compensation on merits. There will be no order as to cost in this

appeal.