

(1972) 03 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No. 351 of 1970 and M.A. (F) 13 of 1970

Samsul Huda

APPELLANT

Vs

London and Lancashire Insurance Co. Ltd. and others

RESPONDENT

Date of Decision : 17-03-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1972 Guw 35

Hon'ble Judges : M.C. Pathak, J; D.M. Sen, J

Bench : Division Bench

Advocate : J. N. Sarma and K.C. Mahanta in C.R. 351 of 1970 and M.A. F 13 of 1970, for the Appellant; S.N. Bhuyan and D.P. Chaliha in C.R. 351 of 1970, for the Respondent

Final Decision : Allowed

Judgement

M.C. Pathak, J.—The petitioner's brother Abdul Mannan died of motor accident on 2nd January, 1966 on the South Trunk Road in front of the Arts building of the Gauhati University, Jalukbari. The deceased was a post graduate student of the Gauhati University. The petitioner along with pro forma opposite parties Nos. 4 to 12 filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939 before the Motor Accidents Claims Tribunal, Assam. On 24th April, 1967 the claimant filed written up processes for service of summonses on the witnesses. The claimant also prayed that 3 of the witnesses, namely, the Vice Chancellor, the Registrar and a Professor of the Gauhati University might be examined on commission. The Claims Tribunal did not pass any order on that petition, but observed that the prayer might be considered later. Later on, the case was transferred to the file of District Judge, L. A. D. Gauhati. who was appointed the Claims Tribunal and it was renumbered as MAC 29 of 1968. The case was fixed for hearing on 30th June, 1969. The claimants filed an application on 26th June, 1969 praying for an adjournment of the hearing fixed on 30th June, 1969. In their application the claimants stated that due to illness of the petitioner who was conducting the case

on behalf of the claimants they could not take steps in the case as ordered by the Court and it was also stated that most of the witnesses were students of the Gauhati University, who had gone away after completion of their studies and as such the claimants required some time to collect the present addresses of the witnesses. The learned Claims Tribunal ordered on 26th June, 1969 to put up the petition with record on the date fixed i.e., 30th June, 1969. Due to illness the petitioner could not stay at Gauhati till 30th June, 1969 and left for Nowgong and he failed to come on 30th June, 1969 to take steps and his lawyer prayed for an adjournment, but the same was rejected and the case was dismissed for default.

2. It is stated that the petitioner was lying ill at his house in Nowgong and he recovered from his illness sometime on 6th August, 1969 and he received a letter from his advocate on 7th August, 1969 from which he could learn about the dismissal of the case for default. He came to Gauhati and on 11th August, 1969 filed a petition under Order 9. Rule 9 read with Section 151 of the CPC for setting aside the order of dismissal and for restoration of the case to the file. The petition was supported by an affidavit sworn by the present petitioner. He also filed another application with affidavit praying for condonation of the delay in filing the application for restoration of the case. The learned Claims Tribunal fixed 26th November, 1969 for hearing the petition for condonation of delay. On 26th November 1969 the petition was dismissed as the petitioner was found absent on call at 12 O'clock. On the same date i.e., 26th November, 1969 the petitioner filed an application at 2-15 P. M. stating that while coming in a jeep from Nowgong to attend the court, the jeep went out of order on the way and he was unable to attend the Court in time and so he prayed that the case might be revived for the ends of justice. A copy of the same is Annexure D to the present petition. By his order dated 23rd December, 1969 the learned Claims Tribunal rejected the petition.

3. The petitioner then filed an appeal against the order dated 30th June, 1969 passed by the learned Claims Tribunal and the appeal has been numbered as M. A. (F) 13 of 1970.

4. The present petition under Article 226 read with Article 227 of the Constitution of India has also been filed against the order dated 30th June, 1969 passed by the learned Claims Tribunal.

5. It is submitted by Shri J. N. Sarma, the learned counsel for the petitioner, that the order dated 30th June, 1969 passed by the learned Claims Tribunal dismissing the claim petition for default was without jurisdiction and that the learned Tribunal refused to exercise jurisdiction vested in it u/s 110-B of the Motor Vehicles Act, 1939, and as such the impugned order dated 30th June, 1969 should be quashed and appropriate direction should be issued to the learned Claims Tribunal to dispose of the matter in accordance with law.

6. Shri S. N. Bhuyan, the learned counsel appearing for the opposite parties Nos. 1 and 2 submits that the application under Articles 226 and 227 of the

Constitution is not maintainable because of waiver. The learned counsel for the opposite parties Nos. 1 and 2 submits that the order dated 30th June, 1969 merged with the order dated 26-1-1969 and 23-12-1969 passed by the learned Claims Tribunal and therefore the present application was not maintainable. The learned counsel for the opposite parties then submits that the Claims Tribunal has jurisdiction to dismiss a claims petition for default inasmuch as Order 9 of the CPC has been made applicable to such proceeding under the Rules made under the Motor Vehicles Act. That the impugned order being within jurisdiction there is no ground for interference with it in a petition under Articles 226/227 of the Constitution. The learned counsel for the opposite parties lastly submits that the onus of proving the claim rests on the claimants and they having failed to establish the claim by adducing any evidence, they were not entitled to any remedy under this writ petition.

7. In view of the submissions made on behalf of the learned counsel of both the parties, the point that arises for consideration is whether the claims Tribunal under the Motor Vehicles Act has jurisdiction to dismiss a claims petition for default without holding an enquiry as required u/s 110-B of the Motor Vehicles Act.

The relevant provisions of the Motor Vehicles Act and the Rules framed thereunder may now be considered,

8. Section 110 provides for constitution of Motor Accidents Claims Tribunal for the purpose of adjudicating upon a claim for the compensation in respect of accidents involving death of, or bodily injury to, persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both.

Section 110-A lays down about the person who is entitled to make the application for compensation, the particulars to be stated in the application, the Claims Tribunal to whom and the period of limitation within which such application is to be made. Section 110-B may be quoted :

110-B. Award of the Claims Tribunal-On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall after giving the parties an opportunity of being heard, hold an Inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

Section 110-C reads as follows:

110-C. Procedure and powers of Claims Tribunals- (1) In holding any inquiry u/s 110-B, the Claims Tribunal may, subject to any rules that may be made in this behalf follow such summary procedure as it thinks fit. (2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on

oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purpose as may be prescribed and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

(2-A) Where In the course of any enquiry, the Claims Tribunal is satisfied that-

(i) there is collusion between the person making the claim and the persons against whom the claim is made, or (ii) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded be it in writing direct that the insurer who may be liable in respect of such claim, shall be impleaded as a Party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

(3) Subject to any rules that may be made in this behalf the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, chose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

110-F reads as follows:

110-F. Bar of jurisdiction of Civil Courts. Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court. Section 111-A deals with the power of the State Government to make rules for the purpose of carrying into effect the provisions of Sections 110 to 110-E, and in particular, to provide for all or any of the matters mentioned in clauses (a) to (e) of the section.

9. u/s 111-A of the Motor Vehicles Act. 1939 the State Government has made Rules which are called the Assam Motor Accidents Claims Tribunal Rules, 1960. Rule 4 of the said Rules reads as follows:-

4. Examination of applicant:- On receipt of an application under Rule 3, the Claims Tribunal may examine the applicant on oath, and the substance of such examination, if any, shall be reduced to writing. Rule 5 lays down the procedure for summary dismissal of an application for compensation.

Rule 6 deals with notices to the owner of the motor vehicle involved in the accident and its insurer.

Rule 7 deals with written statements that may be filed by the owner of the motor vehicle and the insurer, and also the procedure when the claim is tendered but no written statement is filed.

Rule 8 provides for issue of summonses to witnesses on payment of costs involved.

Rule 9 provides for appearance of legal practitioner.

Rule 10 provides for local inspection by the Claims Tribunal and for examining any person likely to be able to give information relevant to the proceeding.

Rule 11 provides that the Claims Tribunal may if it thinks necessary, require the vehicle involved in the accident to be produced by the owner for inspection at a particular time and place.

Rule 12 provides that the Claims Tribunal during a local inspection or at any other time, save at a formal hearing of a case pending before it, may examine summarily any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not, and whether any or all of the parties are present or not. The witness examined under these provisions shall not be administered an oath.

Rule 13 provides that on examination of such witness a brief memorandum of substance of the evidence of such witness shall form part of the records.

Rule 14 provides for adjournment of hearing.

Rule 15 provides that the Claims Tribunal, if found necessary, co-opt. one or more persons possessing special knowledge with respect to any matter relevant to the inquiry.

Rule 16 reads as follows:-

16. Framing of issues:- After considering any written statement, the evidence of the witnesses examined and the result of any local inspection. Claims Tribunal shall proceed to frame and record issues upon which the right decision of the case appears to it to depend.

Rule 17 reads as follows:-

17. Determination of issues:- After framing of the issues, the Claims Tribunal shall proceed to record evidence thereon which each party may desire to produce.

Rule 19 reads as follows:-

19. Judgment and award of compensation :- The Claims Tribunal, in passing orders shall record concisely in a judgment the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer and also the person or persons to whom compensation shall be paid.

(2) Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them.

Rule 20 reads as follows:-

20. CPC to apply in certain cases:- The following provisions of the first schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII; and Order XXIII, Rules 1 to 3.

10. Chapter VIII of the Motor Vehicles Act, 1939 deals with insurance of motor vehicles against third party.

10-A. Section 110-B clearly lays down that no receipt of an application for compensation made under Sec. 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may give award determining the compensation which appears to be just and specifying the person or persons to whom compensation shall be paid. On a careful consideration of the language of Section 110-B and the scheme of Chapter VIII of the Motor Vehicles Act and the rules framed thereunder, we are clearly of the opinion that the Claims Tribunals after giving the parties an opportunity of being heard shall hold an inquiry into the claim and make an award determining the amount of compensation which appears to be just.

11. Under clause (b) of S. 111-A, the State Government may make Rules regarding the procedure to be followed by the Claims Tribunal in holding an enquiry under Chapter VIII of the Act.

Clause (c) of Section 111-A provides that the State Government may make rules regarding the powers vested in a Civil Court which may be exercised by a Claims Tribunal.

Relying on clause (c) of S. 111-A and Rule 20 made thereunder the learned counsel for the owner of the motor vehicle and the Insurer submits that since Order 9, CPC is made applicable to such inquiry, the Claims Tribunal has jurisdiction to dismiss the claim petition for default

Rule 20 however lays down that the provisions of the CPC mentioned in the said Rules shall apply in so far as applicable. There is no provision for dismissal of a claim petition for default in the Act. Under Rule 5 of the Rules, the Claims Tribunal may dismiss an application summarily, if for reasons to be recorded, it is of the opinion that there are no sufficient grounds for proceeding therewith. If the application is not dismissed summarily under Rule 5. the Claims Tribunal has to proceed as provided by the subsequent Rules. On a careful consideration of the language of Section 110-B read with Rr. 6 to 17 we are of the opinion that after the issues are framed following the procedure prescribed under the Rules, the Claims Tribunal has no jurisdiction to dismiss the case for default or in other words it has no jurisdiction to refuse to give an award. In any view of the matter, when the Claims Tribunal in conformity with Rule 5 has not dismissed the claim petition summarily but has framed the issues in conformity with Rule 16, it has to proceed with the case, hold the enquiry and decide the issues notwithstanding the default of either party. This view in our opinion is in accordance with the

decision in the Commissioner of Income Tax, Madras Vs. S. Chenniappa Mudaliar, which has interpreted Section 33 (4) of the Indian income tax Act, 1922 and declared Rule 24 of the Appellate Tribunal Rules, 1946 ultra vires the Section 33 (4). Section 33 (4) of the Indian income tax Act, 1922 reads as follows:-

The appellate Tribunal may after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it is fit, and shall communicate any such orders to the assessee and to the Commissioner.

Rule 24 of the appellate Tribunal Rules was in the following terms:-

24. Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal or may hear it ex parte.

Rule 24 was subsequently amended in the following shape:-

Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may dismiss for default.

After considering the provisions of Section 33 (4) and Rule 24, the Supreme Court observed as follows:-

Assuming that for the aforesaid reasons the Appellate Tribunal is competent to set aside an order dismissing an appeal for default in exercise of its inherent power there are serious difficulties in upholding the validity of Rule 24. It clearly comes into conflict with sub-section (4) of Section 33 and in the event of repugnancy between the substantive provisions of the Act and Rule it is the Rule, which must give way to the provisions of the Act. We would accordingly affirm the decision of the Special Bench of the High Court and hold that the answer to the question which was referred was rightly given in the affirmative.

The question that was answered in the affirmative by the Supreme Court was Whether Rule 24 of the Appellate Tribunal Rules, 1946 in so far as it enables the Tribunal to dismiss an appeal for default of appearance was ultra vires provisions of Section 33 of the income tax Act, 1922.

12. In the instant case no doubt Rule 20 of the Assam Motor Accidents Claims Tribunals Rules is not challenged as ultra vires Section 110-B of the Motor Vehicles Act. But it must be remembered that Rule 20 does not lay down that after the issues are framed in the case in accordance with Rule 16, the Claims Tribunal may dismiss the application for compensation for default of either party. Rule 20 generally lays down that these provisions of Order 9 of the CPC may be applicable in so far as they may be made applicable. Rule 20 does not provide that after framing of issues under Rule 16 an application may be dismissed for default without complying with Rules 17 and 19. Section 110 enjoins a duty upon the Claims Tribunal to adjudicate upon the claim for compensation. Section 110-

B provides that the Claims Tribunal on receipt of an application for compensation, shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and make an award determining the amount of compensation under Rule 5 there may be a case of summary dismissal of an application but if the application is not dismissed summarily under Rule 5 and the proceeding is continued in accordance with the subsequent rules and ultimately issues are framed under Rule 16, the Claims Tribunal must decide the issues and give its findings thereon in its judgment as provided by Rules 17 and 19. In other words the Claims Tribunal must hold the enquiry into the claim and there is no scope for dismissal of the claim for default at this stage.

13. On the facts also it appears that the case was fixed for hearing on 30-6-1969 and the claimants filed an application on 26-6-1969 for adjourning the hearing of the case fixed on 30-6-1969. On 30-6-1969 the counsel for the claimants filed his hajira and an application on behalf of the opposite parties also was filed to the effect that the case should be proceeded with and disposed of expeditiously. In the circumstances we hold that the Claims Tribunal in dismissing the claim petition for default acted without jurisdiction. In refusing to decide the issues and make an award, the Claims Tribunal in the instant case failed to exercise jurisdiction vested in it u/s 110-B and the rules framed thereunder.

14. In the result we quash the impugned order dated 30-6-1969 and direct the Claims Tribunal to proceed with the case in accordance with law after giving opportunities to the parties to produce evidence if they so desire. The petition is accordingly allowed and the Rule is made absolute. In the facts and circumstances of the case however we make no order as to costs.

15. In view of our decision in this Rule no order is necessary in M. A. (F) 13 of 1970.

Rule made absolute.