

(2002) 01 AP CK 0095
In the Andhra Pradesh High Court
Case No : C.M.A. No. 885 of 1990

Shaik Hussain Saheb

APPELLANT

Vs

Koganti Sambrajyam and Another

RESPONDENT

Date of Decision : 04-01-2002

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 110A, 110A(3), 140, 92A

Citation : (2002) 4 ALD 265 : (2002) 1 AnWR 667 : (2002) 1 APLJ 309

Hon'ble Judges : G. Yethirjulu, J

Bench : Single Bench

Advocate : L. Nageswara Rao, for the Appellant; K.V. Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirjulu, J.—This is an appeal preferred against the order dated 13-2-1990 of the Motor Accident Claims Tribunal (District Judge), Guntur in C.F.R. No.2 of 1990 in an un-numbered M.V.O.P. of 1990 filed by the appellant u/s 140 of the Motor Vehicles Act, 1988 ("the Act" for brevity) rejecting the same as barred by limitation.

2. The petitioner-appellant met with a motor accident on 02-09-1985 at 12 noon and received injuries. He filed a petition u/s 140 of the Act on 02-01-1990 claiming a sum of Rs.12,000/- towards compensation under "no fault liability" with interest and costs. The petitioner filed the said petition four years four months after the date of accident. The Tribunal, on the basis of the averment made in the petition, considered the question as to whether the un-registered petition covered by SR.No.2 of 1990 is maintainable without a separate petition for condonation of delay in preferring the claim for compensation. The petitioner contended that regarding the application for "no fault liability" compensation u/s 92-A of the Act, no limitation has been prescribed and as he did not prefer any

application u/s 110-A, the petition is maintainable under law, and there is no necessity of filing an application to condone the delay in filing the original petition. The petitioner, in support of the above contention, relied on two judgments viz., NAZIR AHMED v. KISHAN NANDLAL BHANDIA¹ (paragraphs 3 and 4) and THE NEW INDIA ASSURANCE CO., LTD. v. N.SIMHACHALAM². The Tribunal after considering the principles laid down in the above judgments observed that they do not support the contention of the petitioner. The Tribunal further observed that as per sub-section (3) of Section 110-A of the Act no application for compensation can be entertained after a period of six months and as the wording used in the above Section is wide enough to include all the claims, including the claim u/s 92-A, the Tribunal has got jurisdiction to entertain an application claiming compensation after the period of six months if the Tribunal is satisfied that the claimants were prevented by sufficient cause from making the application in time. The Tribunal also observed that had the Parliament intended that no limitation should be prescribed to a claim u/s 92-A, it would have inserted a clause in Section 92-A that the period prescribed under sub-section (3) of Section 110-A has no application. It was further observed by the Tribunal that the absence of a provision in a particular enactment couldn't be construed as "permission" and it should be construed as "prohibition" to do it. If the claim for compensation u/s 92-A is permitted to be preferred irrespective of lapse of time, there will be no end to litigation. The Tribunal ultimately rejected the petition by holding that there is no separate petition either u/s 5 of the Limitation Act or under sub-section (3) of Section 110-A praying to condone the delay in filing the original petition.

3. In view of the observations made by the Tribunal and in view of the contention of the appellant-petitioner that there is no limitation for filing an application for compensation on "no fault liability", the following is the point which arises for consideration:

Whether there is any limitation for an application filed u/s 92-A of the Act of 1939 or u/s 140 of the Act of 1988; and whether a separate application u/s 5 of the Limitation act is required to condone the delay in filing the petition u/s 92-A?

4. Section 92-A of the Motor Vehicles Act, 1939 reads as follows:

"92-A-Liability to pay compensation in certain cases on the principle of no fault:--

(1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle, shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under the sub-section in respect of the permanent disablement of any person shall be a fixed sum of

seven thousand five hundred rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

5. It is in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of "no fault liability". In SHIVRAJ DAYANU V. UTTAM MORE³, the Supreme Court held that in the matter of interpretation of "beneficial legislation", the approach of the courts is to adopt a construction, which advances the beneficent purpose underlying the enactment in preference to a construction, which tends to defeat that purpose. .

6. Regarding the applicability of limitation for an application u/s 92-A of the Motor Vehicles Act, 1939 or u/s 140 of the Motor Vehicles Act, 1988, the Punjab and Haryana High Court in RAMPIARI v. PUNJAB STATE COOPERATIVE MILK FEDERATION & ORS.⁴ held that the period of limitation prescribed for filing an application u/s 110-A is not attracted to an application u/s 92-A. In the above case the petitioner filed a claim petition u/s 110-A of the Act and also an application u/s 92-A for award of compensation on the principle of "no fault liability". The Motor Accident Claims Tribunal held that the application filed u/s 110-A is not within limitation. The Tribunal came to a conclusion that the period prescribed for filing an application u/s 110-A of the Act is also applicable to an application u/s 92-A and consequently dismissed the said application. In an appeal preferred against the said order, the Punjab and Haryana High Court held that no period is prescribed for filing an application u/s 92-A, that neither the statutory provision nor the judgment of the same High Court in VIPAN JHANJI v. STATE OF PUNJAB⁵ supports the view that the period of limitation prescribed for filing an application u/s 110-A is also attracted to an application u/s 92-A of the Act.

7. In a judgment rendered by the A.P. High Court in THE NEW INDIA ASSURANCE CO. LTD. v. N.SIMHCHALAM & ANR.⁶ it was also held that the dismissal of an application u/s 110-A on ground of delay does not bar a claim petition u/s 92-A of the Act of 1939.

8. The liability of the insurance company is in pursuance of the contract u/s 95 of

the Act. Therefore when the liability is fastened, dis-regarding the provisions of Section 110-A of the Act, the necessary conclusion that could be reached is that, independent of Order that may be passed u/s 110-A of the Act, the liability u/s 92-A can be imposed. The legislature being conscious of the implications of Section 110-A of the Act introduced a provision for "no fault liability" through Amendment Act 47 of 1982, obviously, with a view to relieve the distress of the claimants for whatever reasons, and to fasten the liability at least to the minimum amount prescribed under the Act in case of death and disablement respectively, even if fault is not established. When there is no claim laid or claim u/s 110-A dis-allowed, irrespective of the contributory negligence, the claimants are entitled to the statutory minimum amount adumbrated under sub-sections (2) and (3) of Section 92-A of the Act.

9. The principle laid down in the above judgments is an indication that in a social welfare legislation which is intended to help the victims of motor accidents the interpretation of any provision under such legislation shall be in favour of the victim unless there is an express prohibition under the said statute from seeking a particular relief beyond a particular period. Undisputedly, there is no express provision prescribing limitation for an application u/s 92-A of the Act. The claims tribunal, in the case on hand, rejected the petition on the ground that the limitation prescribed for an application u/s 110-A of the Act is also applicable to an application u/s 92-A.

10. The limitation prescribed for an application u/s 110-A of the Act of 1939 is also not intended to be applied strictly when there are sufficient grounds to condone the delay in filing the application. When such is the intendment of the legislation and when there is no express provision prescribing limitation for an application u/s 92-A of the Act, there is no scope to conclude that the limitation prescribed for an application u/s 110-A is also applicable to an application u/s 92-A of the Act. Since there is no limitation prescribed for an application u/s 92-A of the Act, the question of filing an application u/s 5 of the Limitation Act to condone the delay does not arise.

11. In view of the judgments referred to above and in view of the above observations, I am of the view that the order of the Tribunal rejecting the application u/s 92-A of the Act cannot stand. I accordingly set aside the impugned order dated 13-2-1990 and direct that the application u/s 92-A be numbered if it is otherwise in order and the matter be decided on merits according to law within a period of three months from the date of receipt of this order. The C.M.A. is accordingly allowed. No costs.