

(1997) 04 GAU CK 0019
In the Gauhati High Court
Case No : Civil Revision No. 13 of 1997

Shaila Bala Chose and Others

APPELLANT

Vs

Nitai Chandra Saha and Another

RESPONDENT

Date of Decision : 23-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140, 141

Citation : (1998) ACJ 265

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : M. Kar Bhowmik, for the Appellant; B. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—This is an application u/s 115 of the CPC read with Article 227 of the Constitution of India against the order dated 10.12.1996 passed by the learned Member, Motor Accidents Claims Tribunal, West Tripura, Agartala in Misc. No. 46 (MAC) of 1996. By the said order the learned Member, Motor Accidents Claims Tribunal has denied the relief to the claimant-petitioners in the said claim case u/s 140 of the Motor Vehicles-Act, 1988 and has held that the said claim may be granted if the claimants satisfy the court in the original suit T.S. (MAC) 179 of 1996 that the death of Baikuntha Ghosh on 7.1.1996 was due to road accident.

2. Mr. M. Kar Bhowmik, the learned Counsel for the petitioners submitted that before the Tribunal a copy of the first information report dated. 3.1.1996 relating to the accident has been filed which would disclose that the death of late Baikuntha Ghosh was caused by an accident with the jeep registered as TR-03-1989. Mr. Mi Kar Bhowmik further submitted that the copy of sulathal report (inquest report)) dated 7.1.1996 was also filed before the Tribunal in

which it is stated that the deceased had been under treatment in G.B. Hospital for sustaining injuries by an accident on 31.12.1995 at Shekerkote and he died on 7.1.1996 at 13.40 hours at the G.B. Hospital and the dead body was sent to IGM Hospital morgue for ascertaining the real cause of death. Thereafter, the post-mortem was conducted at the IGM Hospital, Agartala. The said report dated 7.1.1996, copy of which was also filed before the Tribunal, clearly discloses that the cause of death of late Baikuntha Ghosh was the accident which had taken place on 31.12.1995 with the jeep registered as TR-03-1989; Mr, Bhowmik further submitted that a copy of the certificate of insurance granted by the National Insurance Co:, respondent No. 2, was also filed before the Tribunal which clearly indicated that the aforesaid vehicle (Jeep) was insured with the respondent No. 2 for the period from 21.7.1995 to 20.7.1996. The Tribunal, therefore, ought to have allowed the no fault claim of Rs. 50,000/- as provided u/s 140 of the Motor Vehicles Act, 1988 and should not have deferred the adjudication of the no fault liability of the respondents till adjudication of the original suit T.S. (MAC) 179 of 1996: Mr. Bhowmik cited the judgment of Supreme Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, and submitted that the provision u/s 92-A of the Motor Vehicles Act, 1939 which is similar to the provision of Section 140 of the Motor Vehicles Act, 1988 was in the nature of beneficial legislation enacted with the view to confer the benefit of expeditious payment of limited amount by way of compensation to the victims of an accident arising out of the use of the motor vehicle on the basis of no fault liability and while interpreting such a beneficial legislation the approach of the court should be to adopt a construction which advances the beneficial purpose underlying the enactment in preference to a construction which tends to defeat that purpose. Mr. Bhowmik also cited the decision of the Supreme Court in the case of N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal 1980 ACJ 435 (SC), wherein the Apex Court has deprecated the approach of the Motor Accidents Claims Tribunal in being technical and has held that accident Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of, some doubt here or some obscurity there.

3. None has appeared for respondent No. 1 despite notice to the said respondent. Mr. B, Bhattacharjee, learned Counsel for the respondent No. 2, insurance company, however, vehemently argued that sufficient materials were not placed before the Tribunal to show that the death of late Baikuntha Ghosh was caused by accident and whatever documents were submitted they were not originals but photocopies of the originals. He further submitted that no opinion of doctor was on the records of the Tribunal to show that the death of Baikuntha Ghosh was caused on account of accident. Photocopies of the documents which were filed before the Tribunal and on which reliance has been placed by Mr. Bhowmik were at best some documents containing the case of the petitioner and as such no investigation has been made by the; investigating authorities into the said case of the petitioner that the death of Baikuntha Ghosh was caused by the

accident with the jeep. On the materials that were on record, according to Mr. Bhattacharjee, the Tribunal was right in not allowing the no fault compensation to the claimant-petitioners and the Tribunal rightly deferred adjudication of the claim of the petitioners till hearing of the main claim case.

4. I am unable to accept the aforesaid submission of Mr. B. Bhattacharjee. The point for consideration is whether the Tribunal was right in deferring the adjudication of the claim of the petitioners for no fault compensation till the adjudication of the main claim case. Subsection (2) of Section 141 of the Motor Vehicles Act, 1988 which provides for adjudication of Such claim for no fault compensation is quoted herein below:

(2) A claim for compensation u/s 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 140 and also in pursuance of any right on the principle of fault, the claim for compensation u/s 140 shall be disposed of as aforesaid in the first place.

The bare language of the aforesaid Sub-section (2) of Section 141 of the Motor Vehicles Act, 1988 is clear that the claim for compensation u/s 140 in respect of death or disablement of any person, has to be disposed of in the first place u/s 140 and as expeditiously as possible. In view of the said clear provision of Sub-section (2) of Section 141 of the Motor Vehicles Act, 1988, the Tribunal, in my opinion, failed to exercise the jurisdiction that was vested in it to decide the liability of the respondents under the principle Of no fault u/s 140 of the said Act expeditiously and in the first place.

5. The reasons that have been given by the Tribunal in the impugned order for not disposing of the claim of the petitioners u/s 140 are that the petitioners neither filed the report of post-mortem examination nor the injury report from which the injury and the cause of death of late Baikuntha Ghosh could be ascertained and that they have not been able to satisfy the court that the death of Baikuntha Ghosh on 7.1.1996 took place on account of the road accident. This approach of the Tribunal, in my opinion, was a hyper-technical approach. In a case relating to claim for compensation due to death or injury in the motor accident case, the approach of the Tribunal should not be hyper-technical but must be reasonable, just and fair as has been held by the Apex Court in the aforesaid case of N.K. V. Bros. (P) Ltd. v. M. Karumai Animal 1980 ACJ 435 (SC). In the present case the copies of F.I.R., inquest report and the report dated 7.1.1996 of the IGM Hospital filed before the Tribunal sufficiently indicated that the cause of death of late Baikuntha Ghosh was the accident with jeep bearing registration No. TR-03-1989. The said jeep was also insured with the respondent No. 2 as per the copy of the certificate of insurance which had been filed before the Tribunal. The respondent No. 2 in its written objection filed before the Tribunal has merely stated that subject to production and proof of validity of the insurance policy to be produced by the owner of the jeep the insurance company

was liable to indemnify the insured as per the provision of Section 140 of the Motor Vehicles Act, 1988. The respondent No. 2 has, therefore, not disputed in its pleadings the fact that the death of late Baikuntha Ghosh was caused by the accident with the said jeep. Respondent No. 1 who is the owner of the said jeep has not filed any objection before the Tribunal disputing the fact that the death of late Baikuntha Ghosh was Caused due to accident with the jeep, but the pleadings and materials on record it is clear that the death of Baikuntha Ghosh on 7.1.1996 was on account of road traffic accident with the said jeep and the Tribunal should have straightaway allowed the no fault compensation of Rs. 50,000/- to the petitioners instead of deferring the said claim u/s 140 of Motor Vehicles Act, 1988 till the hearing of the main case.

6. In the result, this "revision" petition is allowed and the respondent No. 2 is directed to pay no fault compensation of Rs. 50,000, to the petitioners Within a period of 2(two) months from today with interest at the rate of 12 per cent per annum from the date of filing of the claim petition till realisation of the same.

An authenticated copy of this order shall be furnished to the petitioners within 7 (seven) days from today. No costs.