

(1983) 03 P&H CK 0071

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 328 of 1977

Shila Wanti and Others

APPELLANT

Vs

R.H. Kishore Chand and Others

RESPONDENT

Date of Decision : 21-03-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Limitation Act, 1963 — Article 120
Motor Vehicles Act, 1988 — Section 110B

Citation : AIR 1984 P&H 35

Hon'ble Judges : S.P. Goyal, J; R.H. Kishore Chand, J

Bench : Division Bench

Judgement

S.P. Goyal, J.—This appeal. under clause 10 of the Letters Patent has been brought against the judgment of the learned single Judge dated June 3, 1977 whereby the appeal of the claimant. was dismissed as having abated.

2. Gian Chand Joshi. a clerk in the Railway Workshop Accounts Office, Amritsar, was run over by truck No. PNO 3442 and died on May 11, 1969. His widow. three minor children appellants and two major children respondent No. 5 and 6. filed this petition before the Tribunal alleging that the death of Gian Chand was caused by rash and negligent driving of the truck by Narain Singh. driver. and claimed Rs. 1.70.418.40 as compensation. Messrs Bal Bahadur Kishore Chand and Sons, a joint Hindu family concern, and Rai Bahadur Kishore Chand were named in the petition as owners and the Calcutta Insurance Co. Ltd., the insurer of the truck

3. Respondent Narain Singh, driver of the truck did not appear in spite of service and was proceeded ex Parte. The other three respondents opposed the petition and denied their liability. The Tribunal after recording evidence of the parties dismissed the petition against respondents Nos. 1, 2 and 3 as barred by time as they had been impleaded as parties after the expiry of the period for filing the claim-petition and against respondent No. 1 on the finding that neither he was

employee of respondent No. 1 nor was driving the truck at the relevant time. On the question of compensation it was held that the deceased was equally negligent with the driver and that the pecuniary loss to the claimants was to the tune of Rs. 49,1631-. However, after making deduction on account of contributory negligence and other matters, the claimants were ultimately held entitled only to Rs. 1.7901-.

4. Against the said award of the Tribunal four claimants came up in appeal to this Court. During the pendency of the case. Rai Bahadur Kishore Chand died on Jan. 22, 1975 but the application to bring on record his successor. Partap Chand. was filed sometime after Feb. 24,,1977. when this matter was brought to the notice of the learned counsel for the appellants. It was declined as barred by time holding that the claim proceedings were in the nature of a civil suit; that the Tribunal was a civil Court for all intents and purposes and that the application for impleading the legal representation would be governed by Art. 120 of the Limitation Act. In the result. the appeal itself was dismissed against all the respondents having abated vide judgment dated June 3. 1977. Hence this appeal.

5. There can be no manner of doubt that the proceedings before the Claims Tribunal closely resemble to the proceedings in a civil. Court and as held by their Lordships of the Supreme Court In Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, . the Tribunal is for all intents and purposes a civil Court discharging the same functions and duties in the same manner as civil court is expected to do. Again it was authoritatively settled by a Full Bench of this Court in Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others, that the High Court hearing appeals against the award of the Tribunal acts as a court and that the claims proceedings even if at inception have resemblance to arbitration proceeding do not retain this character as such In appeal.

All the same. question still arises whether on the basis of the said pronouncements It can be said that the application for bringing the legal representatives of deceased respondent on record in the appeal against the award of the Tribunal would be governed by Article 120 of the Limitation Act. The said article provides a limitation of 90 days for an application under the Civil P. C. to have the legal representatives of deceased plain-tiff or appellant or deceased defendant or respondent. made a party. This article obviously applies only to the applications which Are filed under O. 22 of the Civil P. C. The solution of the problem. therefore. depends on the answer to the question as to whether the application filed in the appeal could be said to be an application under the Civil P. C. or in other words, whether the provisions of O. 22 are applicable to the proceedings before the Tribunal or to the appeal in the High Court. We need not, however. dilate on this matter because the Full Bench of this court in Ram Kala and Others Vs. The Assistant Director, Consolidation of Holdings, Punjab, Rohtak and Others, has already pronounced that the provisions of O. 22. Civil P. C., do not apply to the writ proceedings in the High Court although the proceedings are

in the nature of civil proceedings and governed so far as the procedure is concerned by the Civil P. C. Even if the Tribunal or the High Court is held to be acting as court, from this alone it cannot be said that the application to be filed for bringing on record the legal representatives before the Tribunal or court of appeal would be an application under the Civil P. C. The Provisions of the Act and the rules framed there-under also make it abundantly clear that Order 22. Civil P. C., has not been made. applicable to. the proceedings before the Tribunal although the Tribunal has been invested with various other powers of the court under the Civil P.C.

6. Initially. the claims arising out of motor accidents were tried by the civil courts prior to the enactment of Motor Vehicles (Amendment) Act. 1956. By the said amendment, the State Governments were authorised to constitute Claims Tribunal who were empowered to dispose of claims by holding an enquiry following such summary manner as it thought fit. The purpose of the amendment and the creation of the Tribunal obviously was to give speedy relief to the sufferers of the accident and to give free hand to the Tribunal to dispose of the claims speedily, its proceedings not hampered by the rigors of the procedure laid down by the Civil P. C. A similar view was expressed by a Division Bench of this Court as early as the year 1964 in *New India Assurance Co. Ltd., New Delhi v. Punjab Roadways. Ambala City.* 1964 PLR 156 : AIR 1964 P&H 235 in the following terms:--

"Held. that. though the various provisions contained in the Motor Vehicles Act and the Rules framed thereunder do not make applicable the Civil P. C. as a whole, to proceedings before a Tribunal under the Act. yet nothing in the Act prohibits resort by the Tribunal to the principles embodied in various Rules relating to the conduct of proceedings before a Civil Court. Unless there is any prohibition in the rules framed under the Act. the Tribunal is free to follow any procedure which it considers expedient to the interest of justice. S. 110-C of the Act expressly confers powers on the Tribunal to formulate its own procedure. and for the purpose of promoting the ends of justice it can well resort to all the principles of an orderly trial and for that purpose exercise the powers of allowing amendments to a petition or substitution of parties, so as to rectify a mistake or to bring on record parties which are necessary or proper.

Held also, that though O. 1. R. 10, Civil P. C. does not in terms apply to the proceedings before the Tribunal. there Is no prohibition In resorting to the principles contained therein. the technicalities of that rule art not to be taken note of by the Tribunal and it is only the spirit that has to be applied with the object of securing the ends of justice."

The consistent view of this Court has been that the provisions of the Civil P. C. as such are not application though its Principles are often resorted to in regulating the proceedings by the Tribunal Consequently. even though the Tribunal would be entitled to implead the legal, representatives of the deceased claimant or of the owner or the driver but It cannot be said that an application to bring on record

the legal, representatives would be the one filed under the civil P. C. The appeal being a rehearing of the claim and continuation of the original proceedings. the proceedings, the procedural limitations on the powers of the appellate Court would be co-extensive with those of the Tribunal. The moment it is held that the application for bringing on record the legal. representatives of the deceased owner in appeal is not an application under the Civil. P. C., Art. 120 would not govern the same. According to the rule laid down by the Full Bench in Ram Kala and Others Vs. The Assistant Director, Consolidation of Holdings, Punjab, Rohtak and Others, there would be no limitation for filing such aft application but we do not propose to go into this matter because even if it is held that such application would be governed by the residuary Art. 137. the limitation would be three years and the application in the present case had been moved long before the expiry of three years.

7. The matter can be looked at from another point of view also. E. 10, O. 30, Civil P. C. provides that a Hindu undivided family carrying on business under any name may he sued in such name or style as if it were a firm name, and. in so far as the nature of such case permits, all rules under O. 30 shall apply accordingly. R. 4 of O. 30. Civil P. C. provides that notwithstanding any-thing contained in S. 45 of the Contract Act, 1872. where two or more persons may sue or he sued in the name of a firm under the foregoing provisions and any of ouch person dies. whether before the Institution or during the pendency of any suit, it shall not be necessary to join the legal representatives of the deceased to a party to the suit. It is not disputed that Messrs. Rai Bahadur Kishore Chand and Sons was a Joint Hindu family concern and had been sued through its Karta, Rai Bahadur Vision of R. 4 on the death of the Karta, it was not necessary to bring on record his legal representatives because the joint Hindu family concern continues to be a party in spite of the death of the Karta. So question of the abatement of the appeal did not arise and the name of the new Karta could be impleaded as a party at any time. It is therefore. not Possible to sustain the view of the learned single Judge that the appeal had abated on the death of Bahadur Kishore Chand, the Karta of the joint Hindu family concern and the impugned judgment 13 accordingly reversed.

8. As the learned single Judge had not disposed of the appeal on merits. on reversal of the order of abatement, the cue should go to the single Bench for disposal on merits but as the accident In the present case took place in the year 1969. almost 14 years ago. we heard the case on merits as well.

9. The learned counsel for the appellants, in the first instance assailed the finding of the Tribunal that the claim petition against respondents Nos. 1 and 2 the owners, was barred by time as they were impleaded as parties after the expiry of- the period of limitation for filing the claim petition. It is not disputed that the application for substituting the name of the owner of the truck in col. No. 16 was filed after the expiry of the limitation for filing the claim petition which was allowed by the Tribunal vide order dt. Nov. 20, 1969 and the amended Petition

was filed on Nov. 27. 1969. However. the learned counsel urged that neither the provisions of the Act nor the Rules require the claimant to implead any one as a party in the claim petition though in cols. Nos. 15 and 16, the names of the insurer and of the vehicle involved in the accident are required to be mentioned. The Tribunal, therefore is fully competent to add or substitute the name of any Person in those columns at any time to Perform the duty Imposed upon him by the pro-visions of See. 110-B of the Motor Vehicles Act.

The argument of the learned counsel is well-merited. As already noticed above the proceedings before the Tribunal are of a summary nature and the rule framing authority deliberately has not provided the filing of the pleadings in conformity with the Rules of pleadings as contained in the civil P. C. Instead a simple form has been prescribed which does not require anybody to be shown as respondent. Once the claim petition is filed. a duty is enjoined upon the Tribunal, under See. 110-B of the Motor Vehicles Act, to hold enquiry into it. 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 the amount which shall be paid by the insurer or the owner or driver of the vehicle or by all or any of them, as the case may be. In *New India Assurance Co., New Delhi* case (AIR 1964 Punj 235) (supra) this matter was dealt with in detail and the power of the Tribunal to allow amendment to a petition or substitution of parties so as to rectify the mistake or bring on re-cord the parties which are necessary or proper was upheld. In *Bessarlal Laxmichand Chirawala Vs. Motor Accidents Claims Tribunal, Greater Bombay*, . the Division Bench of the Bombay High Court went still further and for holding that it was the duty of the Tribunal itself to ascertain and bring on record the parties liable to pay compensation. observed thus.--

"The form prescribed for filing compensation application does not require that the claimant should include in the application any party as defendant. Neither the Motor Vehicles Act or th4 Rules framed thereunder require the claimant to mention any parties as the opposite parties in the title of the application. On the other hand all the relevant facts in this connection are left to be ascertained by the Claims Tribunal itself. The Tribunal has been entrusted with the duty of finding out all the parties who may be liable to pay compensation. Formal defect of failure to mention appropriate names of the parties who are liable to pay Compensation to the claimant was never intended to defeat the claims filed under the Act."

Respectfully agreeing with the view expressed in the said decisions we hold that the Tribunal has enough. Jurisdiction to allow addition or substitution of any person in the claim petition after the expiry of the limitation for its filing and once the application of the claimants was allowed to substitute the name of the owner in col. No. 16. the petition could not later on be dismissed as barred by time against the parties so substituted because on the date the substitution was ordered limitation for filing the claim had expired. Accordingly the finding of the

Tribunal on issue No. 1 that the claim petition against respondents Nos. 1 and 2 was barred by time is reversed

10. On the second issue as to whether the accident took place due to rash and negligent driving of Truck No. PNO 3442 by its driver, the Tribunal found the deceased guilty of contributory negligence and ascribed fifty-fifty negligence to him and the driver. This finding is based on a stray sentence in the statement of Durga Dass A. W. 4 that the accident took place while Gian Chand was trying to cross the road and had covered the distance of 5/6 feet. On the basis of this fact alone we are afraid, it was not Possible to hold that the deceased was guilty of contributory negligence. A perusal of the site-plan would show that the truck had hit the deceased by going on the wrong side, i.e. right half of the road which clearly negatives the theory that the deceased was guilty of contributory negligence by trying to cross the road. Accordingly the finding of the Tribunal on this issue to the extent that the deceased was guilty of contributory negligence is set aside and it is held that the accident took place entirely because of the rash and negligent driving of the truck by respondent No. 4.

11. The next finding under challenge is that of the amount of compensation held to be payable to the claimants. The Tribunal assessed the compensation first by calculating the total, amount of the pay which was likely to. be drawn by the deceased and their made certain deductions under the various heads. This method of calculation did not find favour with a recent Full Bench of this Court in Lachhman Singh and Others Vs. Gurmit Kaur and Others, wherein It was held that for the purpose of calculating the just compensation, annual dependency of the. dependants should be determined in terms of the annual loss accruing to them due to the abrupt termination of life. For this purpose annual earning of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependants will be the determining factor. This basic figure will then be multiplied by a suitable multiplier. The suitable multiplier The suitable multiplier shall be determined by taking into consideration the number of the years of dependency of the various dependants, the number of years by which the life of the deceased was cut short and the various imponderable factors such like early natural death of the deceased his becoming incapable of supporting the dependants due to illness or any other natural handicap or calamity, the prospects of the marriage of the widow, the coining up of age of the dependants and their developing independent sources of income as well as the pecuniary benefit which might accrue to the dependants on account of the death of the person concerned. Such benefits. however. should not include the amount of the insurance policy of the deceased to which the dependants may become entitled on account of its maturity as a result of the death or the amount of the gratuity payable to the dependants. The amount of compensation payable. therefore. has to be assessed afresh keeping in view the principles laid down by the Full Bench.

12. As is evident from the document "A-1" the deceased was getting Rs. 412.25

per month as his pay and Rs. 30/- per month as education assistance. His monthly total emoluments thus were Rs. 442.25. Out of this amount, he may reasonably be expected to spend Rs. 142/- on his own maintenance. So the dependants were getting the benefit of Rs. 300/- per month from the earning of the deceased and their annual dependency or loss was to the tune of Rs. 3,600/-. The deceased at the time of his death was about 45 years old and as held in a recent Division Bench of this Court in *Asha Rani and Others Vs. Union of India*, in such a case sixteen would be the proper multiplier to assess reasonable compensation. Thus calculated the claimants "would be entitled to Rupees 57,600/- by way of compensation. They shall also be entitled to 12 per cent interest on this amount from the date of the application till its realization.

13. In view of the above discussion, this appeal is allowed, the Impugned judgment of the Tribunal set aside and the award passed in favour of the appellants in the amount of Rs. 57,600/- together with Interest at the rate of 12 per cent per annum from the date of petition till its realization. The owners respondent. Nos, 1. and 2 and the driver. respondent No. 4 would be liable to pay the amount jointly and severally. However, the liability of the Insurance Company would be limited to Rs. 20,000/- apart from the interest at the said rate or the same amount in accordance with the law prevalent at the time of the accident. The claimants shall also be entitled to their costs throughout.

S.S. Sandhawalia, C.J.

I agree.

14. Appeal allowed.