
(1965) 01 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 77-D of 1964

Shrimati Kartar Devi and Others

APPELLANT

Vs

Oriental Fire and General Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 13-01-1965

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1966) 36 CompCas 228

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Advocate : P.C. Khanna, for the Appellant; D.R. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

Gurdev Singh, J.—This appeal is directed against the order of Motor Accidents Claims Tribunal, Delhi, dated 28th November, 1963, whereby the appellants' application for compensation has been dismissed without trial on the short ground that it did not disclose any cause of action.

2. The petitioner-appellants are the widow and sons of Mukand Lal who lost his life in an accident on 23rd April, 1963, with truck No. DLG. 6822 belonging to Messrs. Keshodas and Sons of Darya Ganj, which was being driven at the time by their employee Ram Chander.

3. An application in the prescribed form u/s 110A of the Motor Vehicles Act, 1939, claiming Rs. 20,000 as compensation was instituted before the Motor Accidents Claims Tribunal, Delhi, for the loss of the life of Mukand Lal, by the petitioners being his legal heirs. Kesho Das, being the owner of the truck involved in the accident, and Ram Chander, its driver, were impleaded as respondents, besides the Oriental Fire and General Insurance Company Limited, New Delhi, with whom the vehicle was insured under the Motor Vehicles Act. In disputing their liability, the respondents took up the preliminary objection that there being no allegation of rash and negligent act on the part of the driver

(respondent No. 2), the application for compensation was not maintainable. On 16th October, 1963, to which date the proceedings were adjourned for replication, the petitioners put in an application for amendment of the petition seeking to correct the name of the respondent-owner of the vehicle by adding the words " and Sons " after the name of Kesho Das, and incorporating the following sentence in paragraph 11 of the petition :

"The said injuries which resulted in the death of the deceased were due to and caused on account of the rash and negligent driving on the part of respondent Ram Chander, motor driver, who was driving the vehicle. "

4. This latter amendment was clearly intended to meet the preliminary objection with regard to the absence of any allegation that the accident occurred because of any rash and negligent act on the part of the driver of the vehicle. The learned Tribunal, while allowing the amendment with regard to the name of the respondent-owner of the vehicle, however, refused permission to amend paragraph 11 of the petition by inserting the allegation regarding the conduct of the driver, and therefore dismissed the compensation application for non-disclosure of any cause of action.

5. This amendment has been refused by the learned Tribunal on the ground that an allegation regarding rash and negligent act of the driver is a part of the cause of action and having not been incorporated in the original petition could not be allowed to be taken by way of amendment after the period of limitation prescribed for filing the claim petition had expired. After hearing the learned counsel for the parties, I am of the opinion that none of these reasons is valid, and the learned Tribunal has taken a wrong view of the matter. On a perusal of the order under appeal, I find that in refusing the amendment the learned Tribunal was primarily influenced by the fact that the period of 60 days prescribed u/s 110A of the Motor Vehicles Act for making an application for compensation had expired on the day of prayer for amendment was made. He, however, ignored the fact that Sub-section (3) of Section 110A of the Act itself contains a proviso which empowers a Claims Tribunal to entertain applications for compensation even after the expiry of 60 days in fit cases. Admittedly, the original application for compensation was made within the prescribed period. It is in the form prescribed by the Act, and all the particulars required by the prescribed form were given by the petitioners. There is no specific column requiring the petitioners to state that the accident had resulted from rash and negligent act of the driver. It is thus evident that the failure of the petitioners to specifically allege that the accident resulting in the death of Mukand Lal was caused by rash and negligent driving of the vehicle by Ram Chander is solely due to the absence of the relevant column in the prescribed form of the application. The application clearly states that the claim has been made u/s 110A of the Motor Vehicles Act. In these circumstances, especially when the Tribunal had ample power to entertain an application for compensation even if it had been made beyond the prescribed period of 60 days, the refusal to allow the formal

amendment by specifically alleging that the death had occurred because of the rash and negligent act of the driver is not justified. The learned Tribunal has taken a hyper-technical view of the matter, which far from promoting the ends of justice is bound to result in injustice to the petitioner. As has been held by their Lordships of the Supreme Court in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* all amendments ought to be allowed which satisfy two conditions (a) of not working injustice to the other party, and (b) of being necessary for the purpose of determining the real questions in controversy between them. It was observed by their Lordships in that case that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. In the instant case, all the facts which were required by the prescribed form of the application for compensation were given by the petitioners. The amendment sought did not introduce a new case, and from the respondent's own written statement it is apparent that they were not taken by surprise nor do they have to meet a new claim set up for the first time if the amendment were allowed. Again, in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, their Lordships of the Supreme Court ruled that though it was true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amendment claim would be barred by limitation on the date of the application, yet that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, but it does not affect the power of the court to order it if that is required in the interest of justice. Applying the test laid down in these two decisions, I have no hesitation in holding that the order of the Tribunal refusing the amendment of paragraph 11 of the petition is not justified, especially in view of the fact that the Tribunal had ample power to entertain a case even after the expiry of the period prescribed for making an application.

6. The appeal is, accordingly, accepted, the order of the Tribunal set aside and the appellants are permitted to make the amendment asked for in paragraph 11 of their petition. This shall, however, be subject to the payment of Rs. 32 as costs to the opposite party. The parties are directed to appear before the Tribunal for further proceedings on 5th February, 1965. So far as the costs of this appeal are concerned, each party shall bear its own costs.