

(1995) 02 GUJ CK 0047

In the Gujarat High Court

Case No : Special Civil Application No. 11317 of 1994

S.L. Suchday and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1988 — Section 110, 12, 134, 137, 140

Citation : (1996) 1 ACC 45 : (1995) ACJ 714 : (1995) 1 GLR 629

Hon'ble Judges : J.M. Panchal, J;A.P. Ravani, J

Bench : Division Bench

Advocate : A.R. Mehta, for the Appellant; D.N. Patel, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

J.M. Panchal, J.—The questions which arise for consideration of the court in the present public interest litigation are: whether a police officer, who has recorded information regarding any accident involving death of or bodily injury to any person, or who has prepared report u/s 158 of the Motor Vehicles Act, 1988, should be directed to forward a copy of the same to the Claims Tribunal having jurisdiction in the matter; and whether the Claims Tribunal should be directed to treat any information or report forwarded to it by the police officer as an application for compensation under the Motor Vehicles Act, 1988? ("Act" for short).

2. Mr. Shankarbhai L. Suchday, Notary, District of Kachchh, as well as Mr. Rajesh Premjibhai Thacker and Mr. Urmish S. Suchday, learned advocates, practising at Bhuj-Kachchh, have addressed a letter dated 16.9.1994 to the Hon'ble Chief Justice, Gujarat High Court, pointing out that an application for compensation u/s 166(3) of the Act has to be filed within a period of six months and after coming into force of the Motor Vehicles Act, 1988, delay for a longer period than six months cannot be condoned. It is further stated in the said letter that in view of the provisions of Section 158(6) of the Act it is made obligatory for the officer-in-

charge of the police station to forward a copy of the information recorded regarding any accident involving death of or bodily injury to any person or a report prepared u/s 158 of the Act to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer; whereas a Claims Tribunal has been given discretion to treat a copy of report filed by the police officer as if it were an application for compensation under the Act. Under the circumstances, the learned advocates have prayed the Hon''ble Chief Justice to issue necessary directions to the Inspector General of Police, Gujarat State, for implementation of salutary provisions contained in Section 158(6) of the Act and direct the Claims Tribunal to treat the report that may be submitted by the police officer as an application for compensation suo motu.

3. In exercise of inherent powers, the High Court directed to treat the letter of Mr. S.L. Suchday, Notary, District Kachchh, addressed to the Hon''ble Chief Justice, Gujarat High Court, Ahmedabad, as writ petition. Pursuant to the said directions, the letter has been treated as special civil application instituted under Article 226 of the Constitution of India. The matter was placed for admission hearing on 30.9.1994. Mr. A.R. Mehta, learned counsel, was requested to appear in the petition as amicus curiae and office was directed to supply a copy of the petition to the learned counsel, Mr. Mehta. After hearing the submissions of Mr. Mehta, rule was issued making it returnable on 18.10.1994.

4. We have heard the learned counsel appearing for the parties. The period of limitation for filing claim petition both under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988, was six months prior to coming into force of the Motor Vehicles (Amendment) Act, 1994 (Act No. 54 of 1994). Difference in the two Acts was in regard to provisions relating to condonation of delay. In view of proviso to Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988, the maximum period of delay which could have been condoned was six months. There was no restriction in the old Act so far as power to condone delay was concerned. [See Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, .

5. in order to decide the points arising in the petition, it would be relevant to refer to Section 158 and Section 166 of the Act, which are as under:

158. Production of certain certificates, licence and permit in certain cases.-

(1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, produce-

(a) the certificate of insurance;

(b) the certificate of registration;

(c) the driving licence; and

(d) in the case of transport vehicle, also the certificate of fitness referred to in

Section 56 and the permit,
relating to the use of the vehicle.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving death or bodily injury to another person, the driver of the vehicle does not at the time produce the certificates, driving licence and permit referred to in Sub-section (1) to a police officer, he shall produce the said certificates, licence and permit at the police station at which he makes the report required by Section 134.

(3) No person shall be liable to conviction under Sub-section (1) or Sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under Sub-section (1) or, as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer-in-charge of the police station at which he reported the accident:

Provided that except to such extent and with such modifications as may be prescribed, the provisions of this subsection shall not apply to the driver of a transport vehicle.

(4) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of Section 146 and on any occasion when the driver was required under this Section to produce his certificate of insurance.

(5) In this Section, the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of Section 146.

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or a report under this Section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same also to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer.

166. Application for compensation.- (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death resulted from the accident, by all or any of the legal

representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

(2) Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed:

Provided that where any claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(4) Where a police officer has filed a copy of the report regarding an accident to a Claims Tribunal under this Act, the Claims Tribunal may, if it thinks necessary so to do, treat the report as if it were an application of compensation under this Act.

6. The abovequoted provisions required that as soon as any information regarding any accident involving death or bodily injury to any person was recorded or a report u/s 158 of the Act was completed by a police officer, officer-in-charge of the police station had to forward a copy of the same also to the Claims Tribunal having jurisdiction over the area in which the accident occurred and a copy thereof to the concerned insurer. It is also evident from the provisions of Section 166(4) of the Act that where a police officer had forwarded a copy of the report regarding an accident to the Claims Tribunal under the Act, the Claims Tribunal had discretion to treat the report as if it were an application for compensation under the Act.

7. In exercise of the powers conferred by Sections 12 27 64, Sub-section (14) of Section 88, Sections 110 137 164 and 208 read with Section 211 of the Act, Central Government has made Rules known as "Central Motor Vehicles Rules, 1989". Rule 150 of the Central Motor Vehicles Rules, 1989, provides for furnishing of copies of reports to the Claims Tribunal and reads as under:

150. Furnishing of copies of reports to Claims Tribunal.-(1) The police report

referred to in Sub-section (6) of Section 158 shall be in Form 54.

(2) A registering authority or a police officer, who is required to furnish the required information to the person eligible of claim compensation u/s 160, shall furnish the information in Form 54 within seven days from the date of receipt of the request and on payment of a fee of rupees ten.

The Schedule to the Motor Vehicles Act, 1988, contains Forms and Form No. 54 is as under:

FORM 54 [See rule 150 (a) and (2)] Accident Information Report

1. Name of the police station:
2. CR No./Traffic accident report:
3. Date, time and place of the accident:
4. Name and full address of the injured/ deceased:
5. Name of the hospital to which he/she was removed:
6. Registration number of the vehicle and the type of vehicle:
7. Driving licence particulars:
 - (a) Name and address of the driver:
 - (b) Driving licence number and date of expiry:
 - (c) Address of the issuing authority:
 - (d) Badge No. in case of public service vehicle:
8. Name and address of the owner of the vehicle at the time of accident:
9. Name and address of the insurance company with whom the vehicle was insured and particulars of the Divisional Office of the said insurance company:
10. Number of the insurance policy/ insurance certificate and the date of validity of the insurance policy/insurance certificate:
11. Registration particulars of the vehicle (class of vehicle):
 - (a) Registration No.:
 - (b) Engine No.:
 - (c) Chassis No.:
12. Route permit particulars:
13. Action taken, if any, and the result thereof:
8. The application for compensation can be filed by a person who has sustained injury or by the owner of the property or, where death has resulted from the

accident, by all or any of the legal representatives of the deceased or by any agent duly authorised by the person injured or by all or any of the legal representatives of the deceased. Sub-section (3) of Section 166 of the Act provided that no application for compensation would be entertained unless it was made within six months of the occurrence of the accident. The proviso gave power to the Claims Tribunal to entertain an application after expiry of the said period of six months, but not later than twelve months if it was satisfied that the applicant was prevented by sufficient cause from making the application in time. But, beyond twelve months, the power to condone delay was not available. The legislature thought that there must be finality for the claim and, therefore, it had provided that claim with respect to accident must be filed within six months. As noted earlier, if the claim was filed after the expiry of first six months, but within one year, the Claims Tribunal was given power to condone delay in appropriate cases. In other words, after one year there was no power for condonation of delay. This was well settled in view of the decision rendered in the case of Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, , wherein it is observed as under:

The period of limitation for filing a claim petition both under the old Act and the new Act is six months from the date of the accident. The difference in the two Acts, which is relevant in the present case, is in regard to the provisions relating to condonation of delay. In view of the proviso to Sub-section (3) of Section 166 of the new Act, the maximum period of delay which can be condoned is six months, which expired on 22.1.1990. If the new Act is held to be applicable, the appellant's petition filed in March had to be dismissed. The case of the appellant is that the accident having taken place before the new Act came into force, the proceeding is governed by the old Act, where there was no such restriction as in the new Act. The question is as to which Act is applicable; the new Act or the old...

9. However, in order to mitigate the sufferings and agony of poor victims of unfortunate road accidents, a statutory duty was cast on the police officer investigating the accident to send report to the Claims Tribunal having jurisdiction over the area in which the accident occurred. Such a report gave jurisdiction to the Claims Tribunal if it was so inclined to treat the report as if it were an application for compensation under the Act. Many a time, because of negligence and poverty of the poor victims of unfortunate road accidents, application for compensation was not filed within one year and, therefore, such victims were totally debarred from claiming compensation. Taking into consideration the untold hardship which might result to victims of unfortunate road accidents, the legislature introduced a salutary provision casting a statutory duty on the police officer investigating the accident to send report to the Claims Tribunal having jurisdiction over the area in which the accident occurred. This was a valuable right and this provision needed to be brought to the notice of the authorities for strict compliance so that the report submitted by the police officer to the Claims Tribunal could be treated as an application for compensation under

the Act. Unless the report was forwarded by the officer-in-charge of the police station to the Claims Tribunal, the Claims Tribunal had no occasion to take appropriate action in the matter of awarding compensation to the victims. Section 158(6) gave valuable right to all persons who sustained injury in motor accident. Not only a valuable right was conferred on the person who sustained injury in motor accident, but there was a statutory duty on the police officer investigating accident to send report to the Claims Tribunal having jurisdiction over the area in which the accident occurred. Such a report gave jurisdiction to the Claims Tribunal if it was so inclined to treat the report as if it were an application for compensation. Therefore, we were inclined to give necessary directions to police officers for strict compliance of Section 158(6) of the Act and to the Tribunal to treat the report forwarded to it as claim application. However, Mr. A.R. Mehta, learned counsel who has appeared as *amicus curiae*, has brought to the notice of the court the Motor Vehicles (Amendment) Act, 1994, which has come into force with effect from 14.11.1994. The Motor Vehicles (Amendment) Act, 1994, has amended Section 158(6) of the Act and the amended Section 158(6) provides as under:

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this Section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report forward the same to such Claims Tribunal and insurer.

Sub-section (3) of Section 168 of the Motor Vehicles Act, 1988, laying down period of limitation is omitted by the Motor Vehicles (Amendment) Act, 1994 (Act 54 of 1994). Section 166(4) of the Act is also amended by the Motor Vehicles (Amendment) Act, 1994 and the amended Section 166(4) of the Act reads as under:

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under Sub-section (6) of Section 158 as an application for compensation under this Act.

10. As noted earlier, the Tribunal had discretion under the unamended Section 166(4) of the Act to treat the report filed by the officer-in-charge of the police station as if it were an application for compensation under the Act. Now, under the amended provisions of Section 166(4) of the Act that discretion is taken away and the Claims Tribunal is under an obligation to treat any report of accident forwarded to it under Sub-section (6) of Section 158 as an application for compensation under the Act. The intention of the legislature in amending the provisions of Sections 158(6) as well as 166(4) and omitting Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988, is to relieve the poor, ignorant and helpless victims of unfortunate road accidents from the rigours of the provisions of Sub-section (3) of Section 166 of the Act which provided that a Claims

Tribunal has no jurisdiction to condone delay beyond a period of one year. The newly introduced provisions are not only required to be brought to the notice of officers-in-charge of different police stations in the State, but also to the Claims Tribunals in the State so that justice can be meted out to the poor, ignorant and helpless victims of unfortunate road accidents. Under the circumstances, a case is made out for issuing necessary directions to the respondents to issue appropriate instructions to the officers-in-charge of different police stations in the State to comply with the provisions of Section 158(6) of the Act. Necessary directions are also required to be issued to the Claims Tribunal to treat the report which may be submitted by the officer-in-charge of the police station as an application for compensation under this Act irrespective of the fact whether the claimants have filed any application claiming compensation or not.

11. For the foregoing reasons, the petition is allowed and following directions are issued:

(1) The Director-General and Inspector General of Police, Gujarat State, are hereby directed to issue necessary instructions in vernacular language requiring the officers-in-charge of different police stations in the State of Gujarat to forward information recorded by a police officer regarding any accident involving death of or bodily injury to any person or report prepared u/s 158 of the Motor Vehicles Act, 1988, at the earliest and in no circumstances later than 30 days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction over the area in which the accident occurs and a copy thereof to the concerned insurer.

(2) The Director-General and Inspector General of Police, Gujarat State are directed to issue appropriate instructions in vernacular language to officers-in-charge of different police stations requiring them that in case a copy of information recorded regarding any accident involving death of or bodily injury to any person or report u/s 158 is made available to the owner, a copy of the same should also be forwarded to the Claims Tribunal having jurisdiction over the area in which the accident occurs and to the insurer within 30 days.

(3) The Director-General and Inspector General of Police are hereby directed to issue appropriate instructions as early as possible and latest within one month from the date of receipt of writ.

(4) All the Claims Tribunals in the State are also directed to treat the report of any accident forwarded to the Tribunal under Sub-section (6) of Section 158 as an application for compensation under the Act irrespective of the fact whether the claim petition is instituted by the concerned claimant or not.

(5) If and when any claim petition is filed by any person entitled to file such claim petition under the appropriate provisions of the Act, both the petitions or all such petitions may be clubbed together and be consolidated by the Tribunal.

Before parting with the judgment, we place on record our uninhibited high

appreciation of the valuable and painstaking assistance rendered by Mr. Ajay R. Mehta, learned counsel who appeared in this petition as amicus curiae.

Rule is made absolute to the aforesaid extent, with no order as to costs.