

(1973) 08 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 152 of 1970

Smt. Chawli Devi and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-08-1973

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1975) 2 ILR (P&H) 487

Hon'ble Judges : S.C. Mital, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : S.K. Jain with Mr. I.S. Karewal, for the Appellant; Naubat Singh, District Attorney, Haryana, for the Respondent

Judgement

S.C. Mital, J.—In the accident that occurred on the Yamuna Nagar Road, Jagadhari, Phul Singh died on 24th January, 1968. An application u/s 110-A of the Motor Vehicles Act for compensation against the Union of India was filed by Chawli Devi, widow of the deceased, Nando, mother of the deceased, and his minor son Raj Kumar and his minor daughters Bala Devi, Naresho and Angrezo on 29th March, 1969. In consequence of the objection raised by the Union of India, the Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as the "Claims Tribunal") framed the following issues:--

(1) Whether the claim application is within time ?

(2) If Issue No. 1 is decided against the applicants, whether they were prevented by sufficient cause from making the application in time ?

2. The Claims Tribunal decided both the issues against the applicants and dismissed their claim. Feeling dissatisfied, they preferred the present appeal. Admittedly the major applicants--Chawli and Nando filed the claim after the expiry of the limitation. Hence on their behalf the defect was conceded.

3. So far as the claim of the minor applicants named above is concerted, relief was sought with the aid of section 29(2) read with with section 6 (1) of the

Limitation Act. Relying on Single Bench decision in Harbans Singh v. Atma Singh and others (1966) 68 P.L.R. 371, the Claims Tribunal held that it was not a Court but persona designate. Therefore, the provisions of section 29(2) did not apply.

4. When this appeal came before me sitting singly, other decisions, discussed hereinafter, of this and other Courts were cited. Upon a consideration of the same, I referred the following questions to a larger Bench :--

(1) Has Harbans Singh v. Atma Singh and others (1966) 68 P.L.R. 371, been (sic) overruled by the Full Bench decision in Smt. Shanti Devi and others v. General Manager, Haryana Roadways (1971) 73 P.L.R. 543 : ILR (1971) 2 P&H. 210, and is the Claims Tribunal a "Court" to attract the provisions of the Limitation Act ?

(2) If the Claims Tribunal is not a Court, can by virtue of section 29(2) of the Limitation Act, the benefit of the provisions of the said Act be given to the claimants ?

(3) Is an application filed u/s 110-A of the Motor Vehicles Act "suit", within the meaning of section 6(1) of the Limitation Act?.....

(4) If the application aforesaid is not "suit", whether limitation can be extended under proviso to section 110 A of the Motor Vehicles Act on the ground of minority of the claimants ?

(5) With regard to the first question, it deserves mention that Harbans Singh's case (Supra) was followed by a Division Bench of this Court in Fazlika Dabwali Transport Co. Private Ltd. v. Madan Lal (1968) 70 P.L.R. 9 : ILR (1968) 1 Pb, wherein it was held that the cases under the Motor Vehicles Act dealt with awards of special Tribunal in special proceedings and the right of appeal given to civil Courts is to be strictly construed. Therefore, an appeal under Clause X of the Letters Patent is not competent. This question was later decided by a Full Bench of this Court in Smt. Shanti Devi and others v. General Manager, Haryana Roadways (1971) 73 P.L.R. 543 : ILR (1971) 2 P&H. 210. The learned three Judges constituting the Full Bench held; (1) appeal lies under clause X of the Letters Patent against the decision of a learned Single Judge in appeal filed against the award of the Motor Accidents Claims Tribunal given u/s 110-D of the Act, (2) the proceedings before the claims Tribunal do not have any semblance with the arbitration proceedings, the word "award" has been used synonymous with the word "decree" and (3) the proceedings before the Claims Tribunal clearly resemble the proceedings in a Civil Court and the Claims Tribunal for all intents and purposes discharges the same functions and duties and in the same manner as a Court of law is expected to do. The proceedings before the Claims Tribunal are not in the nature of arbitration proceedings and that the Claims Tribunal while disposing of the Claims, acts as a Court. It merits mention that Fazlika Dabwali Transport Company's case (supra) was cited before the Full Bench, but was not approved of. Although before the Full Bench no reference was to Harbans Singh's case (supra), yet it stands impliedly overruled. The learned counsel for the respondents did not contest this conclusion in view of the decision of the Full

Bench. Question So. 1 is accordingly, answered in the affirmative.

6. Coming now to the applicability of section 29(2) of the Limitation Act, it reads:--

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if SUCH period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law.

The Schedule does not specifically provide any period for the filing of an application u/s 110-A of the Motor Vehicles Act. But Article 137 of the Schedule which provides the period of three years from the time the right to apply accrues for "any other application for which no period of limitation is provided elsewhere in this Division", seems comprehensive enough to cover the case in hand Even if the question is viewed point the stand point that the Limitation Act makes no provision for the application in hand, then also the period of limitation laid down by sub-section (1) of section 110 A of the Motor Vehicles Act as six months from the occurrence of the accident would convey that the Act aforesaid has provided for limitation different from the period prescribed in the Schedule vide Kaushalya Rani Vs. Gopal Singh, . As regard the view that the provisions of the Limitation Act are applicable only to proceedings pending in civil Courts, the learned counsel for the applicants drew our attention to the language used in the preambles of the Acts of Limitation of 1908 and 1963 and argued that the provisions of the Limitation Act, 1963 are now intended to apply to all suits and other proceedings wherever taken. The preamble of the limitation Act, 1963, reads as under :--

An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.

On the former Act of 1908, the preamble was as under:--

Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property. It is hereby enacted as follows.

The omission of the word "Courts" in the preamble of the Act of 1953 is patent. It is also pertinent that in sub-section (2) of section 29 quoted above, the word "Court" does not figure anywhere. That being so, it cannot be held that its application is confined to proceedings in Courts only. It follows, therefore, that even if the Claims Tribunal was not held to be a "Court", the benefit of the provisions of section 29(2) could be given to the applicants. Question No. 2 is

answered accordingly.

For deciding the next question, quotation of sub-section (1) of section 6 of the Limitation Act is necessary. It reads :--

Where a person entitled to institute ft suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reeknoed, miner or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.

Learned counsel for the Union of India contended that the minor-applicants were not entitled to any relief u/s 6 (1) of the Act because of its applicability to "suit or an application for the execution of a decree." The submission is untenable, for such an interpretation would tantamount to taking away the relief specifically provided for in sub-section (2) of section 29. The provisions contained in sections 4 to 24 (Inclusive have been clearly made applicable, subject of course to anything contrary in the special or local law, to any suit appeal or application, by section 29 (2). Reference to "application" in section 29 (2) is wide enough to cover the application in question. The other aspect of this matter is that the application in question is in a form prescribed by the rules framed under the Motor Vehicles Act and it is significant that the application hears all the attributes of a plaint in a suit. For this reason also, the benefit of section 6 (1) cannot be denied to the minor applicants. I find myself in respectful agreement with the following view expressed by the Division Bench of the Madhya Pradesh High Court in Hayatkhan and others v. Mongilal and others 1970 A.C.J. 254.

The word, "suit" occuring in section 6 is capable of having awery wide connotation and may include any legal proceedings commenced by one person against another in order to enforce civil rights. The provisions of section 6 of the Limitation Act, 1963, were therefore applicable to applications for compensation u/s 110 A of the Motor Vehicles Act, 1939, which were in the nature of a suit.

8. In view of the decision given In the preceding paragraph, Question No 4 need not be answered but still it would be worthwhile mentioning that the proviso to sub-section (3) of section 110-A of the Motor Vehicles Act is in these terms :--

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

Section 29 (2) of the Limitation Act lays down that "the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they, are not expressly excluded by such special or local law. "The priviso quoted above does not in any way exclude anything from section 6 (1). As held by a Division Bench of this Court in Sew India Assurance Co. Ltd New Delhi and another v. Punjab Roadways, Ambala City and others AIR 1964 P&H. 235, the

words "sufficient cause" used in proviso to section 110-A(3) should receive a liberal construction so as to advance substantial justice where no serious negligence or inaction or want of bona fides is imputed to the claimant. Where the injured person is incapacitated from presenting the application because of serious injuries, the tribunal can rightfully extend time for presentation of application.

9. So far as the case in band is concerned if the minor applicants were unable to have recourse to section 6(1) of the Limitation Act, in my opinion their minority could have been considered "sufficient cause" for condoning the delay in filing the application. Question No. 4 is answered accordingly.

10. The case be now sent back to a learned Single Judge for decision according to law.