
(1973) 08 BOM CK 0013

In the Bombay High Court

Case No : Special Civil Application No. 857 of 1969

Smt. Kadamma Anjappa

APPELLANT

Vs

Motor Accidents Claims Tribunal

RESPONDENT

Date of Decision : 17-08-1973

Acts Referred:

Motor Vehicles Act, 1988 — Section 110(1)

Citation : (1974) MhLj 558

Hon'ble Judges : S.B. Bhasme, J;P.B. Sawant, J

Bench : Division Bench

Advocate : S.G. Mandrekar, for the Appellant; Ashok Desai with N.G. Thakkar, instructed by Mulla and Mulla and Craigie Blunt and Caroe, for the Respondent

Judgement

S.B. Bhasme, J.—This petition is directed against the order of the learned Member, Motor Accidents Claims Tribunal, Greater Bombay. The petitioners are the parents of one Adivappa, who died in a motor accident. The petitioners filed an application for compensation on October 6, 1960. This application was resisted by the respondent, inter alia, on the ground that the Tribunal had no jurisdiction to entertain the claim as the Tribunal was not set up on the date on which the accident occurred. The learned Member has upheld this contention and rejected the claim on the ground that he had no jurisdiction.

2. Mr. Mandrekar, who appears for the petitioners, has challenged the legality of this order. For considering the contentions raised by Mr. Mandrekar, we will have to mention a few facts and the relevant dates.

3. On the date of the accident, i.e. September 7, 1959, there was no Claims Tribunal constituted for Greater Bombay. The Notification was issued by the Government and a Tribunal was set up with effect from December 1, 1959. According to the view of the learned Tribunal, it was set up nearly 84 days after the Occurrence of the accident. The petitioners could have filed a suit in the civil Court for enforcing their claim for compensation against the respondent. The learned Member says that the Tribunal had no jurisdiction to entertain any

application which was filed after the expiry of 60 days from the date of the accident. Sixty days from the date of the Occurrence expired on November 6, 1959. Under the proviso to sub-section (3) of section 110-A the Tribunal, no doubt, had the power to condone the delay when the application is filed after the expiry of 60 days from the date of occurrence. The learned Member had some doubt about the exercise of the powers in respect of condonation of delay in cases where the accident had Occurred before the constitution of the Tribunal. However, relying on a decision of this Court in *Dayasingh Tejasingh v. Shantabai* (1961) First Appeal No. 484 of 1960, decided by Patel and Chandrachud JJ., on August 17, 1961 (Unrep.), the Tribunal held that the claim for compensation can be entertained even if the accident had Occurred before the setting up of the Tribunal provided that the application is filed within time. As the Tribunal was not in existence at the time of the accident and as it was not constituted within 60 days of the occurrence of the accident, the learned Member was pleased to dismiss the application as barred by limitation.

4. Mr. Mandrekar, who appears for the petitioners, submitted that in effect the Tribunal has failed to exercise the jurisdiction vested in it under the relevant provisions of the Motor Vehicles Act.

5. It will be necessary to refer to certain sections of the Motor Vehicles Act. u/s 110 (1) of the Motor Vehicles Act, a State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles or damages to any property of a third party so arising, or both. u/s 110-A (3), no application for compensation shall be entertained unless it is made within six months after the occurrence of the accident. The proviso to the sub-section empowers the Claims Tribunal to 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. It must be clarified at this stage that the original period of limitation was sixty days and it was made six months by subsequent amendment. In the present case we will have to consider the question only on the basis of the original provision for limitation, which prescribed a period of sixty days. Section 110-F provides that where any Claims Tribunal has been constituted for any area, no civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. It is clear from these provisions that after the setting up of the Claims Tribunal, no suit could be filed in the ordinary civil Court in respect of any claim for compensation arising out of motor accidents. Under the ordinary law, a suit could have been filed for compensation by the representatives of the deceased at any time within a period of one year from the date of the death of the person.

6. Mr. Mandrekar relies on a decision of this Court which is mentioned by the

learned Tribunal. He also derives additional support from a subsequent decision of this Court reported in Abdul Mohamad Agra and Another Vs. Peter Leo D'Mello and Another, .

7. In Dayasingh Tejasingh v. Shantabai, a Division Bench of this Court was called upon to consider a somewhat similar question. The plaintiff in the suit had filed the appeal to this Court as the plaint was returned to her on the ground that the Court had no jurisdiction. She then presented the application to the Tribunal which was constituted under the Motor Vehicles Act. The Tribunal passed an Award in favour of the plaintiff for a sum of Rs. 10,500. The decree was challenged in appeal by the defendants. The principal contention raised in appeal was that the accident had Occurred on March 22, 1959 and the Claims Tribunal was established on December 1, 1959. The plaintiff had the ordinary remedy of a suit and could not make an application to the Tribunal for determination of the compensation. Patel J., who delivered the judgment on behalf of the Division Bench, considered the relevant provisions of the Motor Vehicles Act, which are mentioned by us above. This Court held that the plaintiff had the right to avail of such procedure as was available to her for the enforcement of that right as long as the right was alive and was not barred by limitation. On the date on which the plaintiff made the application, her claim was within time and she could adopt such remedy as was available to her. As soon as the Claims Tribunal was constituted for Greater Bombay, she became entitled to avail herself of the shorter procedure of applying to the Tribunal for determination of the compensation due to her. As soon as the Claims Tribunal was established, section 110-F became operative and no civil Court could have jurisdiction to decide or determine the question which could or would have been determined by the Tribunal.

8. This decision came for consideration before a Single Judge of this Court in a subsequent case reported in Abdul Mahomed v. Peter Leo. In this case the accident had Occurred on December 16, 1958. The Tribunal was constituted on December 1, 1959 and the application was made on December 14, 1959. As the application was not filed within 60 days [the provision regarding limitation as it then existed], the Tribunal had no jurisdiction to entertain the application. The contention raised was that if the accident had occurred within 60 days of the constitution of the Tribunal or after the constitution of the Tribunal and if the application had been made beyond the period of sixty days, then the Tribunal would have jurisdiction to entertain the application if it had condoned the delay in making such an application. Patel J. held that the nonexistence or non-formation of the Tribunal within a period of sixty days of the occurrence of the accident would not oust the jurisdiction of the Tribunal to entertain the application. The learned Judge followed his own earlier view, which he had expressed on behalf of the Division Bench in the case mentioned above. The learned Judge also held that the non-existence of the Tribunal would be a sufficient cause for the exercise of discretion by the Tribunal which is vested in it under the proviso to section 110-A (3) for condoning the delay in the making of

the application.

9. Relying on the ratio of these two decisions Mr. Mandrekar submitted that in the present case the Tribunal had the power to condone the delay although the application was filed beyond the period of sixty days from the date of the occurrence of the accident.

10. Mr. Mandrekar tried to reinforce his argument by referring to two Madras High Court decisions reported in *V. C. K. Bus Service v. H. B. Sethna* AIR 1965 2 Mad. 149 and *Palani Ammal v. The Safe Service Ltd* (1965) 2 Mad. 145. As the law laid down by the two decisions of this Court on the subject is quite clear, we do not propose to discuss in detail other facts or the ratio of the two decisions of the Madras High Court.

11. Mr. Ashok Desai, the learned advocate for the respondent, however, tried to argue on the basis of certain observations of Patel J. in *Abdul Mahomed v. Peter Leo*. The learned Judge while referring to the earlier decision of the Division Bench made the following observations (p. 552) :

...The accident in that case occurred on March 22, 1959 and the Tribunal came into existence on December 1, 1959 and we held that the mere fact of non-existence of the Tribunal would not oust its jurisdiction if the claim which the applicants made was within time according to the normal law, since if a suit had been filed in a Civil Court before the constitution of the Tribunal, bar of limitation on the ground that 60 days had expired from the date of accident could not possibly have been urged before the Court.

Mr. Desai submitted that the Tribunal could entertain the claim even beyond the period of limitation of 60 days provided the claim was not barred by limitation under the ordinary law. In the present case the application for compensation was made after the expiry of one year from the date of the accident. We do not think that this will be a correct reading of the ratio of the decision of this Court.

12. In all cases where the accident had occurred before the setting up of the Tribunal, different points will have to be decided. If the accident had occurred before the setting up of the Tribunal and the suit for compensation was barred by limitation, then no one can suggest that such a claim can be revived after the constitution of the Tribunal. If the Tribunal was set up within a period of one year or within a period of limitation prescribed for the suit, then certainly the claimant can file an application before the Tribunal. If it is filed beyond the period of limitation i.e. 60 days, then the Tribunal had the power to condone the delay provided the applicant shows sufficient cause. This Court has held that the non-existence of the Tribunal when the cause of action arose would be a sufficient ground for condonation of delay. In all cases where the claim for compensation was not barred by limitation when the Tribunal came into existence, the Tribunal can entertain the claim. In the present case there are two hurdles in the way of the petitioners. The application is filed beyond the period of 60 days from the date of constitution of the Tribunal. The application is also filed after the expiry of

one year from the date of occurrence .No doubt under the ordinary law if the suit was filed after the expiry of one year, then it would have been dismissed as barred by limitation. But in the present case the law of limitation will have to be considered as provided by the Motor Vehicles Act. Under sub-section (3) of section 110-A the period of limitation is 60 days. An application can be entertained by the Tribunal at any time even after the expiry of 60 days provided it is satisfied that the applicant was prevented by sufficient cause from making the application in time. The petitioners in the present case certainly had shown sufficient cause for not making the application within 60 days. But the petitioners will have further to satisfy the Tribunal that they were prevented by sufficient cause from making the application within a period of one year from the date of accident. The application is filed beyond a period of one year from the date of occurrence .The delay till the date of the constitution of the Tribunal is satisfactorily explained in the present case. The application will have to be remanded to the Tribunal for consideration of the other question. The petitioners will be at liberty to satisfy the Tribunal that they were prevented by sufficient cause from making an application earlier at any time from the date of the constitution of the Tribunal.

13. In the result, the order passed by the Tribunal is set aside. The proceedings are remanded to the Tribunal for disposal in accordance with law. Rule is made absolute. The petitioners will get the costs of this application.