
(2014) 02 TP CK 0035

In the Tripura High Court

Case No : MAC APP No. 10 of 2007

Sri Sankar Chandra Das Vs Sri Sujit Saha and The National Insurance Company Ltd.

Date of Decision : 28-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 3
Evidence Act, 1872 — Section 165
Motor Vehicles Act, 1988 — Section 158, 158(6), 165, 166, 166(1)

Citation : (2014) 3 GLD 218 : (2014) 2 GLT 522

Hon'ble Judges : Deepak Gupta, C.J; S.C. Das, J

Bench : Division Bench

Advocate : P. Roy Barman, Mr. S. Bhattacharji and Mr. K. Nath, for the Appellant; D.K. Biswas and Mr. G.K. Nama, for the Respondent

Judgement

Deepak Gupta, C.J.—The following question has been referred to the Division Bench for decision:-

What course of action the Motor Accident Claims Tribunal should follow when the claimant(s) does not appear before the Tribunal or does not take any step to produce evidence before the learned Tribunal?

Before dealing with the question, it would be appropriate to refer to certain provisions of the Motor Vehicles Act (hereinafter referred to as the M.V. Act).

2. Section 158(6) of the M.V. Act reads as follows:-

158(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.

3. Section 158(6) of the M.V. Act requires the Police Officer to give information to the Claims Tribunal having jurisdiction of the area about an accident having taken place and along with this information in the shape of FIR, the Police Officer shall also submit other documents submitted by the owner.

4. Claims Tribunals are constituted u/s 165 of the M.V. Act, 1988 and applications for compensation have to be filed in terms of section 166 of the M.V. Act. Sub-section (4) of section 166 also empowers the Claims Tribunal to treat any report of an accident forwarded to it u/s 158(6) as an application for compensation under the Act.

5. Section 166(2) gives an option to the claimant to file a claim petition either before the Claims Tribunal having jurisdiction over the area in which the accident occurred, or before the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or before the Claims Tribunal within the local limits of whose jurisdiction the defendant resides. Thus, unlike the provisions relating to civil suits, a claim petition can also be filed at the place where the claimant himself resides. To give an example, if a person who is an ordinary resident of Agartala has gone on a holiday to Himachal Pradesh and meets with an accident there, he has the option of filing the claim petition either at Agartala or before the Motor Accident Claims Tribunal in Himachal Pradesh having jurisdiction over the area where the accident occurred.

6. Section 168 of the M.V. Act provides that the Claims Tribunal after giving notice of the application to the insurer and giving the parties (including the insurer) an opportunity of being heard, shall hold an inquiry into the claims and make an award determining the just amount of compensation.

7. The provisions of the Code of Civil Procedure, the Evidence Act etc. are not strictly applicable to inquiries conducted by the Motor Accident Claims Tribunal and only those provisions will be attracted which have been made applicable in terms of the Central Motor Vehicles Rules or the Motor Vehicles Rules of the State. The Claims Tribunal may devise its own procedure while holding the inquiry, but that procedure must be in consonance with the rules of natural justice. Though the provisions of the CPC do not apply to such an inquiry, the principles behind the Code will be attracted even in inquiries u/s 168 of the M.V. Act. Even with regard to the Evidence Act though the strict rules of proof of evidence may not apply, the Tribunal cannot admit in evidence scraps of paper which have no evidentiary value whatsoever. Therefore, this Court has held that photostat copies are not per se admissible unless the original is shown to the Court.

8. To prove an FIR in an inquiry u/s 168 of the M.V. Act, it may not be necessary to call the officer who recorded the FIR or to call the informant at whose instance the FIR was recorded, but the least that would be required is that the certified copy of the FIR is produced in Court. Though these questions are not directly involved, we are dealing with these issues to understand what is the nature of

the inquiry contemplated u/s 168 of the M.V. Act. It is our considered view that the inquiry contemplated by the legislature u/s 168 is not an adjudication as contemplated under the CPC or under the Evidence Act. However, at the same time section 168 itself provides that notice of hearing must go to the affected party. What is the purpose of giving the notice? The answer is obvious, that the affected parties have a right to put forth their case and contest the allegations made in the claim petition. Many issues may arise before the Claims Tribunal such as, whether the accident did take place? Whether the claimant or the victim suffered injuries in a motor vehicle accident? Who was the driver of the vehicle? Who was the owner of the vehicle? Whether there was a valid insurance policy? Whether the insurer is liable to indemnify the insured? All these questions have to be answered by the Claims Tribunal after holding an inquiry and section 168 also casts a duty upon the Tribunal to clearly specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. These questions can only be decided after an inquiry in consonance with the rules of natural justice is held. Witnesses will have to be examined and permitted to be cross-examined to come to a just and fair conclusion. The manner of summoning the witnesses, the manner in which documents can be exhibited may not be as rigid and as technical as provided in the CPC or the Indian Evidence Act, but the inquiry has to be in consonance with the settled principles of natural justice.

9. In this behalf, we may make reference to the judgment of the Apex Court in *Jai Prakash Vs. National Insurance Co. Ltd. and Others*, wherein the Apex Court laid down a number of guidelines and thereafter gave certain directions in respect of petitions entertained u/s 166(4) of the M.V. Act which read as follows:-

21. For complying with section 166(4) of the Act, the jurisdictional Motor Accident Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an Institution Register for recording the AIRs which are received from the Station House Officers of the Police Stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the Register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of the victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant(s) appear, the miscellaneous application shall be converted to claim petition. Where a claimant(s) file the claim petition even before the receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident (by any "Police Officer-Advocate-Doctor" nexus, which has come to light in several

cases).

(d) The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categorize the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavor to determine the compensation amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time-frame not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the Claims Tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in a fixed deposit and disbursed as per the directions contained in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

(h) As the proceedings initiated in pursuance of Sections 158(6) and 166(4) of the Act are different in nature from an application by the victim(s) u/s 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation.

22. The aforesaid directions to the Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided u/s 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Section 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.

10. Here it would be pertinent to mention that the Apex Court clearly indicated that the summary procedure mandated under sections 168 and 169 should not be one like a regular civil suit. The Apex Court also advised the Tribunals to make effective use of section 165 of the Evidence Act which permits a judicial authority to question the witnesses. In our considered view, the purpose of laying down the guidelines was that the Tribunals should not be technical or hyper-technical in their approach. The role of the Tribunal is not to be a silent mute spectator and the Tribunal, if the need arises, can put questions to the parties or their witnesses to elicit the truth. The Tribunal in certain cases may even without the

parties making any application summon witnesses which it feels are necessary to be examined for deciding what is the just compensation to be awarded after the inquiry.

11. We are dealing with a legislation which is meant to benefit the victims of road accidents. The approach of the Tribunals should be such that it helps the victims. At the same time, the approach of the Tribunals cannot be that in every case compensation must be awarded. We are, unfortunately, also aware of the large number of false cases being filed under the M.V. Act. The Tribunals cannot be swayed only by sympathy while granting compensation. The Tribunals should endeavor to find out the truth and after that, award just compensation. In the search for truth, the Tribunals are not bound by the strict provisions of the CPC or the strict rules of the Evidence Act and can evolve their own procedure to come to a just finding. If this approach is followed, then it is obvious that no petition filed under the provisions of the M.V. Act can be dismissed in default. This is the only obvious conclusion which follows. Having held so, what is the Tribunal to do if the claimant fails to appear before it and lead evidence before it? In our view, the Tribunal must continue with the inquiry as best as it can and decide the matter on the basis of the evidence before it.

12. In this behalf, we may make reference to a judgment delivered by a learned Single Judge of the Gauhati High Court in Rocky Dev Burman Vs. Lohit Prakash Dutta and Another, wherein the learned Judge held as follows:-

3. It has been the consistent view of this Court, as expressed in Nanda Lal Kedia Vs. Jaswant Singh and Another, Samsul Huda Vs. London and Lancashire Insurance Co. Ltd. and others, and Akan Chandra Das and Another Vs. Md. Hussain and Another, , that for mere default in appearance of the claimant, a claim application, seeking compensation, made under the provisions of the Motor Vehicles Act, 1988, (in short, "the MV Act"), cannot be dismissed, for, there is no provision in the MV Act and/or the Rules framed thereunder permitting or empowering the Motor Accident Claims Tribunal to dismiss, for default, an application seeking compensation made under the MV Act. However, when a claimant fails to appear, take requisite steps and/or adduce evidence and the Tribunal finds that on the ground of such failure, the claimant has completely failed to prove his/her claim for compensation, the Tribunal shall be at liberty to pass appropriate order(s) of no-claim award, i.e., an award to the effect that the claimant has failed to prove that the claimant is entitled to receive any compensation.

4. What further logically follows is that if, despite failure, on the part of the claimant, to appear, take requisite steps and/or adduce evidence, the Motor Accident Claims Tribunal finds that the claimant is entitled to compensation, there is no impediment in law, on the part of the Tribunal, to determine the amount of compensation, which the claimant may be entitled to, and pass an award accordingly even in the absence of the claimant.

We are largely in agreement with the views expressed by the learned Single Judge.

13. However, another learned Single Judge of the Gauhati High Court, (Agartala Bench) in Smt. Sundari Tripura Vs. Smt. Ulapi Debbarma and National Insurance Company Ltd., took a different view. The learned Single Judge held as follows:-

5. Be that as it may, even if the claimants-appellants had not adduced the evidence on having provided with sufficient opportunities, the learned Tribunal ought not have dismissed the claim on merit rather would have adjourned the case sine die. The subject-matter of the M.V. Act, 1988 and its own terms are so distinct from the general provisions of the CPC.

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8. The Tribunal may also compel attendance of the claimant/s in appropriate cases, as the witnesses rather posting dates in the routine manner. In extreme cases, adjournment sine die would be availed of as the alternative possible step. Disposal on merit without recording the evidence is contrary to the M.V. Act, 1988, the CPC being the general law cannot eclipse the provisions of a special enactment like the M.V. Act, 1988. Provisions of order 17, rule 3, CPC will not apply, as those do not fit in the scheme of the M.V. Act, 1988, in the tribunal proceeding initiated for adjudicating the claims of those category of persons as stated.

14. At the outset, we may notice that it appears that the attention of the learned Single Judge was not drawn to the judgment in Rocky Dev Burman's case which had followed the law laid down by the Gauhati High Court in three other cases. We are sure that if attention of the learned Single Judge had been drawn to these cases, the learned Single Judge would not have issued the directions that the cases should be adjourned sine die. To that extent, the judgment in Sundari Tripura's case is per incuriam.

15. However, since this is a judgment delivered by a learned Single Judge who is now a Judge of this Court, we feel that we should deal with it in greater detail. The learned Single Judge is right in holding that the Tribunal should not have dismissed the claim on merits. We have no quarrel with this part of the judgment. However, the further direction of the learned Single Judge that if it could not be decided on merits, the case should be adjourned sine die, in our opinion, does not lay down the correct position of law. Whenever a proceeding is filed in any Court or even an application is filed before a Tribunal, the same must be adjudicated upon as early as possible. Once the Court gives liberty to the Tribunals to adjourn cases sine die, it will have a catastrophic effect and claims may be delayed for decades if not longer.

16. It would also be pertinent to mention that another learned Single Judge of the Gauhati High Court, Agartala Bench in Namita Goswami and Others Vs. Hiralal Debnath, followed the judgment in Rocky Dev Burman's case wherein the

learned Single Judge held as follows:-

9. There is a difference between accident and claim. Facts relating to an accident can be proved from the accident information received from the police but a claim petition cannot be decided in absence of the claimant and the witnesses as the claim has to be proved by way of evidence by the claimant. A court is established to render justice in accordance with law, not to frustrate the same. Thus, it would not be proper on the part of a court or Tribunal to dismiss a claim petition on merit in absence of the claimant. Rather, it would be proper for the Tribunal to make an attempt for securing the attendance of the claimants as well as their witnesses in view of the provisions of section 169(2) of the Act, 1988. As in the instant case, the said attempt was not made by the Tribunal and the claim petition of the claimant-appellants was also dismissed for non-appearance of claimants, according to this court, the impugned order requires to be set aside and accordingly the same is set aside.

17. No doubt, as held by us, the Tribunal cannot dismiss the claim in default, but we must also appreciate the difficulties of a Tribunal before whom a claimant does not appear at all. We cannot expect the Tribunal to start collecting evidence for the claimant. That is not the intent of the provisions of the M.V. Act. Even in a claim petition which may be instituted u/s 166(4), the Tribunal will have to issue notices to the claimant and the other affected parties such as, owner, driver and insurer. If the claimant does not appear before the Tribunal, what should the Tribunal do? Should it proceed to decide the claim? In our view, that may not be necessary in every case in view of the fact that the claimant has the option of filing the claim petitions before three different fora. The claimant may have already approached another Claims Tribunal and he may not even respond to the notice issued by the Claims Tribunal having jurisdiction over the area where the accident has taken place. In cases registered in terms of section 158(6) read with section 166(4), we are of the considered view that the role of the Tribunal is only to issue notice to the parties and if the claimant does not appear, the Tribunal should restrain from passing any further order and should remit the matter to the Police Station. The Tribunal may in certain cases inquire from the Insurance Company or the owner whether they have received notices from any other Tribunal. In case, minors or persons under disability are involved and no notices have been served upon the insured or the insurer, then the Tribunal may be justified in proceeding with the matter u/s 166(4), but not in all cases.

18. After a case is registered whether u/s 166(4) or u/s 166(1), it is also the duty of the claimant to file proper pleadings and lead evidence to help the Tribunal in arriving at a just compensation. The claimants cannot leave everything to the Tribunal to decide. If they do so, then they are taking a risk that the Tribunal will decide the case as per its best judgment.

19. In cases which are filed through counsel or even in cases which are registered u/s 158, we are clearly of the view that the role of the Tribunal is to ensure that justice is done. In both these types of cases, in case the claimant

does not appear before it either to lead evidence or to take any other action required, the Tribunal may send notice to the claimant and the counsel of the claimant (if the claimant is represented by counsel) that none has put in appearance and that the matter has been adjourned for a particular date and if on that date nobody puts appearance for the claimant, then the Tribunal shall proceed to decide the matter without any assistance on the basis of the record/evidence which may be available on the record. The Tribunals cannot wait for eternity for the claimants to come and appear before the Tribunals. If the claimant still does not appear, the Tribunals would be fully justified in disposing of the matter on merits and if there is no evidence, then obviously the claim petition will have to be rejected. We are, however, making one exception. Where minor children or persons under disability are involved, the Claims Tribunals should in such a situation appoint a legal aid counsel to look after the interest of the minors and persons under disability and the matter be proceeded further. However, if the legal aid counsel is also unable to produce any evidence, then there is no other option for the Tribunal, but to decide the case on merits.

20. We may make it clear that during the entire inquiry contemplated u/s 168, the Tribunal shall be required to send only one notice and merely because the claimant does not appear time and again, it would not mean that the Tribunal will again and again have to send notice to the claimant. If after one notice, the claimant appears and on another adjourned date he does not again appear or takes steps, then the Tribunal will not be obliged to send him a second notice and the claim petition shall be decided on the basis of the material on record.

21. We further direct that if a petition is decided or if an award is made without the benefit of the assistance by the claimants or their counsel, then the Tribunal shall ensure that the amount awarded is invested and is not released till the claimants actually appear before the Tribunal. We, therefore, answer the reference in the aforesaid terms. Now, the matter be placed before the appropriate Bench for hearing.