

(2014) 08 GAU CK 0032

In the Gauhati High Court

Case No : MC 2104/2014 in MAC Appl. SI No. 211598

Union of India

APPELLANT

Vs

Kunjalata Sut

RESPONDENT

Date of Decision : 02-08-2014

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2014) 08 GAU CK 0032

Hon'ble Judges : Abhay Manohar Sapre, C.J

Bench : Single Bench

Advocate : M Bhattacharjee, Learned Counsel, Advocates for the Appellant

Judgement

Abhay Manohar Sapre, C.J.—Heard Ms. M. Bhattacharjee, learned counsel for the applicants/appellants.

2. This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by Union of India (non applicant of MAC Case No. 20/2010) against the award dated 31.8.2012 passed in the aforesaid MAC Case by the Member, MACT-cum-Addl. District Judge, FTC, Biswanath Chariali.

3. Heard on MC No. 2104 of 2014.

4. This is an application filed by the applicant/appellant (Union of India) under section 5 of the Limitation Act for condonation of delay in filing appeal. According to the appellants, the delay in filing appeal is of 251 days.

5. In my opinion, the delay of 251 days is totally unexplained. It is indeed inordinate and thus cannot be condoned for want of any sufficient cause, which is required to be made out under Section 5 of the Limitation Act. Secondly, when the Act has given 90 days to file an appeal then there is absolutely no reason as to why the appellants waited for 251 days to file an appeal. Thirdly, the appellants are not rustic villagers, who are usually not conversant with the legal intricacies of limitation prescribed under the Law of Limitation. On the other

hand, the appellants being Union of India is always advised by the office of Assistant Solicitor General on day to day basis in the matter of filing cases in Courts. In my view, the usual ground that administrative sanction was not granted due to which, delay in filing appeal was caused, does not appear to me to be bonafide because no department would take 251 days to decide as to whether appeal in such small matter should be filed or not. That apart, neither proper facts are pleaded nor any documents are filed in support of such allegations, except usual averments. It is to my mind a clear case of either casualness or/and negligence in prosecuting the appeal which cannot be countenanced.

6. In view of foregoing discussions, we are of the opinion that no case is made out on facts for condonation of delay in filing the appeal. The application i.e. MC 2104 of 2014 is thus liable to be dismissed. It is accordingly dismissed.

7. As a consequence, the appeal is also dismissed as being barred by time. Since the appeal is being dismissed as barred by time, it is not necessary for me to examine the controversy involved in appeal on merits.

8. Even then, I perused the record of the case with a view to find out as to whether appellant has any case on merits. Having so perused, I find no case on merit and hence appeal deserves dismissal on merit too.

9. Here is a case where one widow filed a claim petition under Section 166 of the Act before the Claims Tribunal out of which this appeal arises claiming compensation for the death of her husband - Girindra Sut, who died in a vehicular accident on 27.10.2009, when he was hit by a vehicle while going on his 2 wheeler. Since the offending vehicle, which dashed to deceased's vehicle, belonged to Union of India (Military) and hence, the claim petition was filed against the Union of India being its owner. The deceased was working as Store Keeper in Military Services and was aged 41 years. The claimant (widow) adduced evidence and proved the case set up in the claim petition that accident occurred due to negligence of driver of offending vehicle, deceased's monthly income, his age and dependency etc.

10. It may be pertinent to mention that appellant herein who was non applicant before the Tribunal in the claim petition did not adduce any evidence in rebuttal to the evidence adduced by the claimant and for all practical purposes remained ex-parte.

11. The Tribunal on appreciation of claimant's evidence allowed the claim petition and awarded a total sum of Rs. 19,03,000/-. It is against this determination, a time barred appeal is filed by the Union of India.

12. In my view, this was not a case where the Union of India should have filed appeal against such award. Indeed, I really fail to appreciate as to what was there for Union of India to file an appeal and on what grounds against the impugned award? In the absence of any rebuttal evidence adduced by the Union

of India, there was neither any evidence and nor any factual foundation led by Union of India to attack the impugned award in appeal.

13. The Tribunal, in my view, rightly in paragraph 19 made calculation of compensation based on deceased monthly salary, keeping in view the law laid down by Supreme Court in Sarla Verma's case. It reads as under:

"The Tribunal is of the opinion that the rule of thumb as quoted in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, can be applied in the instant case. From the second schedule of the M.V. Act in a fatal accident case, the claimant is entitled to get the following award as compensation and accordingly, the award is computed in the following scale:

Rs. 14,039/- - Rs. 4,679/- = Rs. 9360/- X 12 = Rs. 1,12,320/- X 13 = 14,60,160/-

30% of Rs. 14,60,160/- = Rs. 4,38,048/- = Rs. 14,60,160/- + 4,38,048/- = Rs. 18,98,208/-.

The claimant is also entitled to get funeral expenses to the tune of Rs. 3000/- and also Rs. 5000/- for loss of consortium on account of death of her husband. Thus, the total compensation would be Rs. 18,98,208/- + Rs. 3000/- + Rs. 5000/- = Rs. 19,03,000/-.

The above amount is awarded to the claimant on the death of her husband due to the aforesaid vehicular accident."

14. So far as issue relating to negligence of driver of offending vehicle is concerned, I do not find any case to reverse the finding at the instance of appellants in their favour because as noted above, they failed to adduce any evidence on the question of negligence despite its availability.

15. In my view, therefore, the award passed holding the driver of appellant's vehicle to be responsible for causing accident resulting in death of claimant's young husband and determining the actual dependency is just and reasonable. It cannot be said to be in any way on higher side but it is based on proper calculation calling no interference in appeal.

16. In this view of the matter, the appeal fails and is accordingly dismissed in limine on the ground of it being barred by limitation and also on merits.

17. No costs.