
(2003) 02 AHC CK 0066
In the Allahabad High Court
Case No : C.M.W.P. No. 1068 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(4), 169

Uttar Pradesh Motor Accidents Claims Tribunal Rules, 1967 — Rule 206

Citation : (2005) ACJ 470 : AIR 2003 All 234

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Saurabh Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard counsel for petitioner.

2. The Motor Accident Claims Tribunal 9th Additional District Judge, Muzaffer Nagar has by its order dated 28-10-2002, allowed application filed by Claimant respondent No. 2 Tej Pal Singh under Order 9 Rule 4 read with Section 151 CPC for recalling order dated 19-12-2000 in Misc. Case No. 12 of 1998 for restoration of claim petition, which was dismissed in default on 19-12-1997, and has restored Misc. Case No. 12 of 1998 to its original number. The said order dated 28-10-2002, is under challenge in this writ petition.

3. Sri Saurabh Srivastava, learned counsel for petitioner has relied upon a decision of Division Bench of this Court in Nanhi Bai and Others Vs. Motor Accidents Claims Tribunal and Others, holding that all the provisions of CPC have not been made applicable before the Tribunal and that only the provisions, specified under Rule 21 of U.P. Motor Accidents Claims Tribunal Rules, 1967, are applicable. Neither Order 9, Rule 9 nor Section 151 CPC has been made applicable to the proceedings for restoration of application dismissed in default. According to the Division Bench, the provisions appear to have been deliberately

excluded from application and that it is a case of *cosus omissus*.

4. The aforesaid decision was rendered in respect of claim filed u/s 110-A of Motor Vehicles Act, 1939 and in interpretation of Rule 21 of U.P. Motor Accidents Claims Tribunal Rules, 1967 made under the Act, which was amended in 1988 and a new Act, namely, Motor Vehicles Act, 1988 (59 of 1988) was enacted making substantial and comprehensive changes with regard to the accident claims. Whereas Section 140 provides for "no fault" liability, Section 163 provided for a Scheme for payment of compensation in case of; "hit and run" motor accidents. Section 163A makes special provision for payment of compensation on structured formula basis and that Section 168 provided for award of Claims Tribunal. The limitation of six months provided in Sub-section (3) of Section 166 of Motor Vehicles Act, 1988 and the power of Tribunal to condone the delay up to the expiry of twelve months was deleted by Motor Vehicles (Amendment) Act, 1994. A new set of rules were framed in the name of Motor Vehicles Rules, 1998 regulating procedures to the Claims Tribunal. Rule 221 is *pari materia* to Rule 21 of 1967 and provides as follows :--

"221. CPC to apply in certain cases.-- The following provisions of the First Schedule to the Code of Civil Procedure, 1908 shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Rules 9 to 13 and 15 to 30 of Order V, Order IX. Rules 3 to 10 of Order XIII; Rule 2 to 21 of Order XVI; Order XVII; and Rules 1 to 3 of Order XXIII."

5. The rules are framed for carrying out the object and purpose of the Act. Since the Act has been amended by taking away limitation for filing claims, a claim petition which is not rejected at the first hearing cannot be dismissed for default.

6. Section 168 of Motor Vehicles Act, 1988 provides that on receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insuree and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall 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. Section 158(6) of Motor Vehicles Act, 1988 provides that 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.

7. An information given by the police, as aforesaid, under Sub-section (4) of Section 166 is to be treated as a claim petition. After the application has been made or information, as aforesaid, has been received, the Tribunal may examine the application and dismiss the application summarily, if for reasons to be recorded, it is of the opinion that there are no sufficient grounds for proceeding therewith. Rule 207 provides that if the application is not dismissed under Rule 206, the Claims Tribunal shall send to the owner of the motor vehicle involved in the accident and its insurer, a copy of the application together with a notice of the date on which it will hear the application, and shall call upon the parties to produce on that date any evidence which they may like to produce. Rule 208 (2) provides that where the claim is contested, the Claims Tribunal, with a view to elucidating matters in controversy between the parties, examine orally such of the parties to the claim proceeding as it deems, fit and shall reduce the substance of the examination, if any in writing. Issues may be framed under Rule 209 and witnesses may be summoned where the application is made. The Tribunal shall make a brief memorandum of the substance of what is deposed and such memorandum shall be written and signed by the Claims Tribunal and shall form part of the record. The medical evidence may be taken down word for word. The Claims Tribunal has been given the power for local inspection and inspection of vehicle under Rules 213 and 214. The powers to examine any person likely to be able to give information relating to the injury, have been provided under Rule 215. The adjournment of hearing is provided under Rule 216, for the reasons to be recorded, on the application of a party.

8. The aforesaid rules show that the claims tribunal has to decide the application by holding an inquiry. A claim petition, if it has not been dismissed under Rule 206, cannot be dismissed for default. If the claimant does not appear on the date fixed, the Tribunal shall proceed to decide the claim. If evidence has been led or partly led, it may examine the evidence and make an award. Where evidence has not been led, the Tribunal may decide matter for insufficiency of or for want of evidence, but having proceeded with the matter beyond the stage of Rule 206, it cannot dismiss it only on the ground that on the date fixed the claimant or claimants have failed to appear.

9. In *Stella v. Motor Accidents Claims Tribunal* 1989 ACJ 181, it was held that even in the absence of a provision in procedural laws, power inheres in every Tribunal, of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play and even when Order IX of the CPC is not applicable to the given facts of a case, the Tribunal does have the power to restore a claim petition that has been dismissed for default by using its inherent powers, in which Rules of 1998 or Order IX CPC has been made applicable and thus the Tribunal has power to restore the claim petition.

10. In *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, the Supreme Court allowed the appeal, set aside the orders of Tribunal, which held that Tribunal does not have powers to review its orders except to correct any

error in calculating the amounts. The Allahabad High Court had dismissed the writ petition stating that it is a question of fact for which writ petition is the appropriate remedy. The Supreme Court allowing applications filed under Sections 151, 152 and 153, CPC, proving for recall of orders on the ground of revelations of new facts that injuries were not suffered due to accident, held in para 16 as follows :--

"16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

11. So far the question whether restoration of restoration application is concerned, the power may be found u/s 151, CPC and is also spelled out of the provisions of the Act, which provide for Motor Accidents Claims Tribunal as a special Tribunal for remedies which earlier lied in a action for compensation based on Torts. The new forum was created for speedy and simplified remedy, of compensation to accident victims or their dependants and provisions for losses and expenses. New remedies of "no fault liability" and for "hit and run" cases were added to meet extra-ordinary situations for immediate compensation or where the negligent owner or driver of vehicle has not been identified. The claimant, or dependent of claimant is often handicapped in persuing the remedy. It will, therefore, be unjust and unfair where a claim, which is prima facie found to be valid for consideration, be dismissed for default and thereafter remedy of restoration, or restoration of restoration application be dismissed on technical grounds. Even a police report has to be treated as an application, and that every application filed must be inquired into and decided by the Tribunal. In case no evidence is forthcoming, the Tribunal may dismiss the claim but that it cannot dismiss the claim for default and that where it has been so dismissed, the claim petition may be treated to have been filed on the date when such an application is made as there is no provision of limitation after deletion of Sub-section (3) of Section 168 of Motor Vehicles (Amendment") Act, 1988 (Act No. 59 of 1988). The decision in Nanhi Bai's case (supra) was under the old Act and is thus not applicable to the facts of the present case.

12. Coming to the facts of the case, the petitioner has given reasons for absence on 18-8-2000 that he could not attend the hearing on account of heavy rains. These reasons have been found to be sufficient to recall the order. The discretion has rightly been exercised and thus no interference is required to be made with the impugned order.

13. The writ petition is, accordingly, dismissed.