

Chandrika Prasad Vs. Assistant Engineer, Iii Northern Railway and anr.

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Court : Allahabad

Decided On : Sep-09-1983

Reported in : II(1984)ACC355; AIR1984All101

Judge : N.D. Ojha and ;O.P. Saxena, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110A(2) and 110A(3); Uttar Pradesh Motor Accidents Claims Tribunal Rules, 1957 - Rule 3; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

Appeal No. : F.A.F.O. No. 143 of 1976

Appellant : Chandrika Prasad

Respondent : Assistant Engineer, Iii Northern Railway and anr.

Advocate for Def. : Lalji Sinha, Adv.

Advocate for Pet/Ap. : S.B. Chaudhari and ;R. Chaudhari, Adv.

Disposition : Appeal allowed

Judgement :

O.P. Saxena, J.

1. This is an appeal under Section 110-D of the Motor Vehicles Act against the order dated 31-1-1976 passed by the Motor Accidents Claims Tribunal (District

Judge), Fatehpur dismissing an application filed under Section 110-A of the Motor Vehicles Act.

2. The facts giving rise to this appeal are that on 31-1-1974 at about 4.15 P. M. the appellant met with an accident with a truck. He was going on a cycle on his way back to this house in Mohalla Chhinkantola in the town of Fatehpur. He was going on Banda-Sagar Road from north to south and at about 4.15 P. M. he reached near the culvert in Nayaganj. Truck No. U. P. W. 715 came from behind and dashed against his cycle. He fell down. The left front wheel of the truck passed over his legs and the same were injured. The accident was seen by P. W. 2 Satya Narain and P. W. 5 Santosh Kumar who were accompanying him and also by Ram Gopal and Laxman Kumar. He was taken to the District Hospital, Fatehpur for medical aid.

3. On 17-7-1974 the appellant filed an application under Section 110-A of the Motor Vehicles Act claiming Rs. 30,000/- as compensation. The number of truck was given in the application. The name and address of the owner, of the vehicle was not given and it was mentioned that the same would be given on being found out. The name and address of the insurer of the vehicle was also not given and a similar note was made.

4. On 20-1-1975 the appellant gave application-paper no. 16-Kha for amendment of the application and for showing the names of the respondents in column no. 16. The application was allowed on 13-11-1975.

5. The claim was contested by the respondents inter alia on the allegations that the application has not been properly presented to the Tribunal and it had no jurisdiction to try the case, that the accident took place due to negligence of the appellant and not due to the rash and negligent driving of the truck, that the truck is not registered in the name of respondent No. 1, that the application is bad for non-joinder of the Union of India, that the compensation claimed is excessive, that the application is barred by time and that the application is bad for non-joinder of the driver.

6. The Tribunal accepted the plea that respondent No. 1 is not liable. It rejected the pleas that the application is bad for non-joinder of Union of India or the driver of the truck or that the application has not been properly presented before the Tribunal and it had no jurisdiction to try the same. It accepted appellant's version that the accident took place as a result of rash and negligent driving of the truck by the driver. It held that the appellant is entitled to claim Rs. 8,800/- as compensation. It, however, accepted the plea that the application is barred by time and consequently dismissed the same with costs on parties. Hence, this appeal.

7. The learned counsel for the appellant did not challenge the amount of compensation determined by the Tribunal. He also did not assail the finding that the respondent No. 1 is not liable. He assailed the finding that the application is barred by time. The learned counsel for the respondents did not assail the findings on other pleas raised by the respondents or the compensation determined by the Tribunal. He supported the finding of the Tribunal on the question of limitation,

8. The only question for determination in this appeal is as to whether the Tribunal rightly dismissed the application as time barred.

9. Section 110-A (2) provides:--

'Every application under Sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.'

Sub-clause (3) provides as below :--

'No application for compensation under this section shall be entertained unless it is made within six months of the occurrence of the accident: Provided that the Claims Tribunal may entertain the application after 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.'

14. Section 111-A authorises the State Government to make rules for the purpose of carrying into effect the provisions of Sections 110 to 110-E of the Motor Vehicles Act. The U. P. Motor Accidents Claims Tribunal Rules, 1957 were

published in U. P. Gazette dated 2nd Sept., 1967. Rule 3 provides that every application for payment of compensation made under Section 110-A of the Act shall be made in the form prescribed by these rules. The form prescribed in the rules shows that the application for compensation has to be addressed to the Motor Accidents Claims Tribunal. Besides giving the particulars of the claimant, the form prescribes 23 paragraphs for giving information required therein. Paragraph 15 relates to the registration number and the type of the vehicle involved in the accident, Paragraphs 16 and 17 relate to the names and addresses of the owner and insurer of the vehicle. The name of insurer cannot be known to the claimant and sometimes the name of the owner is also not known. If an application filed within six months is rejected for want of some of these particulars, it will result in great injustice to the claimant.

11. We are of the opinion that the word 'shall' has been used in Section 110-A (2) of the Motor Vehicles Act and Rule 3 of the U. P. Motor Accidents Claims Tribunal Rules, 1967 in a directory sense and not in a mandatory sense.

12. In State of U. P. v. Manbodhan Lal, (1957 ALJ 921) the Supreme Court quoted the following passage from the case of Montreal Street Railway Co. v. Normandin reported in LR (1917) AC 170 : (AIR 1917 PC 142) with approval:

'... .. The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked, at. The cases on the subject will be found collected in Maxwell on Statutes, 5th Edn., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, act affecting the validity of the acts done.'

13. The Supreme Court held at page 928 (of All LJ) : (at page 917 of AIR) :--

'Hence, the use of the word 'shall' in a statute though generally taken in a mandatory sense does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid.'

14. The Supreme Court referred to the following quotation from Crowford on 'Statutory Construction', Article 261 at p. 561 with approval:--

'The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other... ..'

15. In the case of State of U. P. v. Bhubram Upadhyaya reported in : 1961 CriLJ773 , the Supreme Court held on page 765 :--

'(29) The relevant rules of interpretation may be briefly stated thus : When a statute uses the word 'shall', prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and above all, whether the object of the legislature will be defeated or furthered.'

16. In R.B. Sugar Co. v. Rampur Municipality : [1965]1SCR970 the Supreme Court held on page 899:

'(7) The question whether a particular provision of a statute which on the face of it appears mandatory--inasmuch as it uses the word 'shall' as in the present case--or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory,'

17. In *Khub Chand v. State of Rajasthan* : [1967]1SCR120 the Supreme Court held on page 1077 :

'The term 'shall' in its ordinary significance is mandatory and the Court shall ordinarily give that interpretation to the term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations.'

18. The object of the Motor Vehicles Act is to provide compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles. A perusal of the various provisions of Sections 110 to 110-E of the Motor Vehicles Act and the U. P. Motor Accidents Claims Tribunal Rules, 1967 will show that the object of the Act and the Rules is to facilitate the payment of compensation to the victims of accidents arising out of the use of motor vehicles. There is no provision in the Act or the Rules that the application will be rejected in case the information required in any of the paragraphs 1 to 23 has not been furnished. As pointed out earlier, the claimant may not be knowing the names and

addresses of the owner and insurer of the vehicle. In the absence of any provision of the nature referred to above regarding the rejection of the application on account of non-furnishing of the details required in any of the paras 1 to 23, we would be impliedly introducing such a provision if we hold that the use of the word 'shall' is in the sense of being mandatory and not directory. This may result in gross injustice to the claimant who is bona fide not in a position to furnish particulars of any of the paras, particularly paras 16 and 17.

19. The matter may be looked at from another angle. Form 1 of Appendix 'A' to the Civil P. C. gives the title of suits as below :

'IN THE COURT OF

A, B, (add description and residence)

Plaintiff.

against

C, D, (add description and residence)Defendant'

20. Form 2 of Appendix 'A' of the Civil P. C. gives description of parties in particular cases.

21. The form of application for compensation prescribed under Rule 3 of the U. P. Motor Accidents Claims Tribunal Rules, 1967 only provides that the application has to be addressed to the Motor Accidents Claims Tribunal of the place within whose jurisdiction the accident took place. It does not provide for the title of suits being given in the manner provided in Form 1 of Appendix 'A' of the Civil P. C.

22. The absence of any title of the application in the prescribed form for the application for compensation obviously means that the rules do not contemplate the impleading of any opposite parties as such. The case of Bessaralal Lakshman Chand Chirawala v. Motor Accidents Claims Tribunal, Greater Bombay reported in : AIR1970 Bom337 may be referred to. On page 340 it was held :

'It is quite clear on a reading of the prescribed form that it does not direct the claimant for compensation to include in the application any party as defendant and/or opposite party. We apprehend that all the relevant facts are in this connection left to be ascertained by the Claims Tribunal which has been entrusted with the very serious duties of finding out all the parties who may be liable to pay compensation by recording evidence to be produced by the parties concerned. Formal defect of failure to mention appropriate names of the parties who would be liable to pay ultimately compensation to the claimant was never intended to defeat the claim filed under the Act.'

23. It is, thus, unnecessary for the claimant to implead any opposite parties in an application for compensation. If the claimant gives all the information available to him and files an application within time prescribed, the application cannot be rejected as defective and the Tribunal may give time to the claimant to furnish the remaining particulars after making necessary inquiries.

24. There is still another aspect of the matter. We have referred to the proviso to Sub-section (3) of Section 110-A of the Motor Vehicles Act and under the said proviso the 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. If the claimant wants to file an application after ascertaining all the particulars and does so after the expiry of period of six months, the Tribunal may condone the delay on being satisfied that there was sufficient cause for the same.

25. In case of Mehta Goods Carrier (P.) Ltd. v. Darshan Devi the application for compensation gave the names and addresses of the truck drivers and the insurance company. The accident took place on 20-1-1959. On 20-12-1960 the Tribunal ordered the impleadment of the owner company. The latter took the plea that it was barred by time. It was held that the Tribunal was well within its rights to implead the owner company and entertain the application against the same even after the prescribed period of sixty days.

24. In the case of New India Assurance Company v. Punjab Roadways, AIR 1964 Punj 235 application for compensation was filed by the husband of the injured

person. The Claims Tribunal permitted the amendment of the application and the substitution of the wife in place of the husband. It was held that it had powers to do so under the aforesaid proviso.

27. In case of Smt. Urmil Bahri v. Motor Accidents Claims Tribunal : AIR1975 All198 , it was held that once an application for compensation has been made by injured person within time prescribed and he dies subsequently, enhanced damages may be claimed by his successors by way of amendment without coming within the mischief of Section 110-A (3) of the Motor Vehicles Act.

28. In the case of New India Assurance Company Ltd. v. Smt. Urmil Bahri : AIR1975 All422 , a special appeal filed against the aforesaid decision was dismissed. It was held that once an application has been moved within time for claim, its amendment can always be made as there is no provision in the Act prohibiting the amendment of the application after the lapse of a particular time.

29. The facts of this case are also noteworthy. The accident took place on 31-1-1974. The application for compensation was filed on 17-7-1974. It was filed within six months of the accident as provided in subsection (3) of Section 110-A of the Motor Vehicles Act. The applicant had given the number of trucks. In column No. 16 it was noted that the name of the owner was not known and the same would be given on being found out. On 1-8-1974 the applicant gave application No. 8-Ga with the request that an inquiry be made from the office of the R. T. O., Kanpur about the name of the owner of the truck No. U. P. 715 so that the claimant could summon him and after he had put in appearance the name of the insurer of the vehicle could be known. On 5-8-1974 the Tribunal ordered 'inquire as prayed'. The application for compensation was dismissed for default on 15-10-1974. An application for restoration was given on 20-12-1974. The application was allowed on 6-1-1975. On 20-1-1975 the applicant gave application No. 16-Kha for amendment of the application for compensation and for showing the names of the respondents in column No. 16. No order was passed on this application. Summons were, however, issued to the respondents. Respondent no. 2 was duly served on 3-3-1975. Paper No. 17-Gha is the original summon. On 8-3-1975 it was ordered that the case would proceed ex parte against respondent No. 2.

Respondent No. 1 filed the power of Sri Ram Pal Singh, Advocate on 17-7-1975. Paper No. 22-Ga is the power. Respondent No. 1 is the Assistant Engineer, III Circle, Northern Railway, Allahabad and is a subordinate respondent No. 2, the General Manager, Northern Railway, New Delhi. Respondent No. 1 filed written statement-paper No. 29-Kha on 16-9-1975. On 13-11-1975 the Tribunal allowed the application for amendment of plaint vide Paper No. 16-Kha after hearing counsel for the parties. Evidence of the parties commenced on 13-11-1975 and continued up to 21-11-1975 at the first instance and the statements of P. W. 1 Chandrika Prasad, P. W. 2 Satya Narain, P. W. 3 Dr. P.S. Misra, P. W. 4 H.C. Amarnath and P. W. 5 Santosh Kumar were recorded. D. W. 1 Bansraj was examined by respondent No. 1, The arguments were heard and 24-11-1975 was fixed for judgment. On 24-11-1975, 25-11-1975 was fixed for further arguments. On 25-11-75 claimant gave application--paper No. 45-Ga for condoning delay. On 26-11-1975 objection--paper No. 46-Ga was filed. On the same date it was considered necessary to issue a fresh notice to respondent No. 2 and 1-1-1976 was fixed for his written statement On 1-1-1976 respondent No. 2 did not file any written statement and the case was ordered to proceed ex parte. January 8, 1976 was fixed for arguments. On 7-1-1976 respondent No. 2 gave an application for setting aside the ex parte order and for admitting the written statement. Respondent No. 2 filed power-paper No. 55-Ga of Sri Rampal Singh, Advocate, who had earlier filed power for respondent No. 1. On 8-1-1976 the application was allowed on payment of Rs. 25/- as costs. P. W. 1 Chandrika Prasad and P. W. 5 Santosh Kumar were recalled for further cross-examination on 22-1-1976. P. W. 6 Constable Raghunath Prasad was also examined. The cross-examination of P. W. 5 Santosh Kumar was concluded on 30-1-1976. On the same date the respondent's counsel made a statement that the evidence adduced by respondent No. 1 may be read as evidence of respondent No. 2 also. The claimant's counsel had no objection and the request was allowed.

30. It would, thus appear that the summons of the application for compensation was duly served on respondent No. 2 on 3-3-1975 and he did not choose to contest the application. The application was being contested by his subordinate, respondent No. 1, who had also the benefit of legal advice of the railway counsel. In these circumstances, it cannot be said that respondent No. 2 did not know

about the application for compensation or that it was wrongly ordered that the application would proceed ex parte against him.

31. The Tribunal allowed the application-paper No. 16-Kba after hearing counsel for the parties, including Sri Ram Pal Singh, the Railway Counsel. Even if it amounted to the impleadment of the respondents on 20-1-1975, the Tribunal was within its rights to condone the delay and allow the application for amendment. After having exercised that jurisdiction the Tribunal could not permit the respondents to re-agitate the matter of limitation in the same proceedings. The principle of res indicate also applies as between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided title matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. We may refer to the case of *Satyadhyan Ghoshal v. Smt Deorajin Devi* : [1960]3SCR590 . After having allowed the application for amendment of the application for compensation showing the names of the respondents in column No. 16, the Tribunal could not permit the respondents to raise the same plea again and hold that the application for compensation is barred by time.

32. In the case of *Baburam Ashok Kumar v. Antarim Zila Parishad* : AIR1964 All534 , it was held (at p. 535):

'A Court of appeal would not interfere with the exercise of discretion by the Court below if the discretion has been exercised in good faith after giving due weight to relevant matters and without being swayed by irrelevant matters. If two views are possible on the question, then also the Court of appeal would not interfere, even though it may exercise discretion differently, were the case to come initially before it. The exercise of discretion should manifestly be wrong.'

33. We have referred to the facts of this case in some detail. The appellant did not know the name of the owner and as such he mentioned in column No. 16 that the name would be given when it was found out. He also gave an application to the Court for finding out the name of the owner of the vehicle. The mere fact that the vehicle belonged to the Northern Railway did not satisfy the applicant as he wanted to ascertain as to in whose name the vehicle was registered. After having

found this, he gave application for amendment of the application for compensation. In these circumstances the Tribunal was quite justified in exercising its jurisdiction and condoning the delay under the proviso to Sub-section (3) of Section 110-A of the Motor Vehicles Act and allowing the application for amendment. This Court would not interfere with the exercise of discretion by the Tribunal.

34. We are, thus, of the opinion that after having allowed the application for amendment of application for compensation showing the names of the respondents, in column No. 16, the matter became res judicata at the subsequent stage of the same proceeding and the Tribunal could not permit the respondents to re-agitate the matter, holding that the application for compensation is barred by time. The application was, in fact, presented in time and its subsequent amendment could not make it barred by time.

35. We, therefore, hold that the application for compensation is not barred by time.

36. In view of our finding above the appeal succeeds. The appellant is entitled to a decree for Rs. 8,800/- as compensation against respondent No. 1.

37. The appeal is allowed and the order passed by the Motor Accident Claims Tribunal, Fatehpur is set aside. The petition is decreed for a sum of Rs. 8,800/- against respondent No. 2. In the circumstances of the case the parties will bear their own costs in both the Courts.

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