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Court : Chhattisgarh

Decided On : Mar-12-2003

Reported in : 2004ACJ1727; 2003(3)MPHT45(CG)

Judge : Fakhruddin, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166 and 166(3)

Appeal No. : Misc. Appeal No. 257/83

Appellant : Ravindra Kumar Mishra and anr.

Respondent : Dular Ram and ors.

Advocate for Def. : V.V.S. Murthy, Addl. Central Government Standing Counsel for Respondent Nos. 2 and 4 and; Ayaz Naved,

Advocate for Pet/Ap. : Sanjay Sharma Agrawal, Adv.

Judgement :

Fakhruddin, J.

1. Heard learned Counsel for the parties.
2. The appellants filed a claim application before the Motor Accidents Claims Tribunal on the ground that an accident had occurred on 1st February, 1981.

3. It is stated that the appellants while going from Bhilainagar to Raipur on a motorcycle, were dashed badly by the respondent No. 1 - Dular Ram, who was driving Vehicle No. C.P.R. 8394 rashly and negligently, as a result of, accident had occurred and the appellants' sustained injuries. They were admitted in D.K. Hospital, Raipur. A report of this accident was lodged. Challan was filed against the driver and he was prosecuted. A Criminal Case No. 1515/81 was also registered against the driver in which he pleaded guilty and a fine of Rs. 350/- was imposed on him. During the accident the appellants have sustained injuries on various parts of their body. An application under Section 110(A)(3) was filed for condonation of delay in preferring the claim.

4. Notices were issued of this application. In the application filed on 3rd April, 1982, Smt. Bina Mishra contended that she was confined to hospital and was discharged on 17th February 1981 but was unable to move the application for compensation for want of information for which she had to depend on her husband. The husband Ravindra Kr. Mishra was discharged from the hospital on 25th March, 1982. The appellant No. 1 has filed an application and he had stated that he was discharged on 25th March 1982. After his discharge from the hospital, the appellant started collecting the requisite informations and thereafter, the application for compensation was filed. The postal department opposed it and contended that insurer was not impleaded as a party and the name was not disclosed till then. In support of the claim, appellant R.K. Mishra was examined himself; discharge certificate and fitness certificate were produced. Photocopies thereof were also filed. He has stated that he was in Bhilai Hospital from 2-2-1981 to 25-3-1982. In cross-examination he has stated that he remained unconscious for three days and after three days he had come to know, from which vehicle the accident had occurred. Due to said accident he got fractured on his both legs, which have been operated 16 times. So far as his wife is concerned, she was discharged on 17-2-1981. In Paragraph 6 of his deposition, he was questioned about filing of the claim. He stated that while he was admitted in the hospital he had thought of preferring the claim but he could not do so for want of required information and after collecting the required information he had preferred an appeal for compensation. In spite of the evidence on record, his claim has been dismissed on two counts by the Claims Tribunal; one it is barred by limitation and

further that it is a joint application.

5. Learned Claims Tribunal while rejecting his claim has held that his hospitalization itself was not a valid ground for not presenting the claim application within time and further that in case of bodily injuries, separate applications must have been made. The other ground given by the Tribunal for rejection is that petitioner No. 1 was not an illiterate person. It is observed that the facility to approach the Claims Tribunal from a place like Bhilai was easily available. Learned Counsel for the applicants submitted that the benevolent provisions have been interpreted by the Tribunal more stringently.

6. Respondent No. 1 - Dular Ram was an employee and offending vehicle was being used by Postal Department as 'Mail Van'. It was being driven by Dular Ram and accident had occurred with that vehicle but the Postal Authorities turned deaf ears.

7. Learned Counsel for applicant submitted that the Tribunal was not at all justified in rejecting the claimant's application for claim and rejection caused great miscarriage of justice. The ground taken is that there was a joint application by the claimants, i.e., husband and wife. Another technical objection as observed in Paragraph 7 of the order is that the petitioner No. 1 is not an illiterate person. The facility to approach the Claims Tribunal was easily available. The Tribunal has further observed that each claimant has to file separate application in personal injury cases and joint application was not according to the rules. The Tribunal appears to be under the impression that joint applications are not tenable. In the case of National Insurance Company Limited v. Kuntala Swain, 1993 ACJ 65, a learned Single Judge of High Court on single application for the compensation of wife and his daughter filed by the claimant has held that such single application is maintainable.

8. It may be relevant to note that amendments has been made and Sub-section (3) of Section 166 has been omitted by Section 53 of the Motor Vehicles Act an the effect of the Amending Act is that w.e.f. 14-11-1994, there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realized the grave injustice and injury, which was being caused to the

heirs and legal representatives of the victims who died in accidents by rejecting their claims petitions only on the ground of limitation. It is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident, of the bread earner of the family, in many cases such claimants are virtually on the streets. Even in cases where the victims escape death some of such victims are hospitalized for months if not for years. The Court observed that in its wisdom the Parliament, rightly thought that prescribing a period of limitation and restricting the power of the Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimants.

9. Learned Counsel for the appellants relied on a decision in the case of Rajasthan State Road Transport Corporation and Ors. v. Kiran Lata and Ors. reported in 1993 ACJ 130. Paragraph 9 of the said judgment reads as under:--

'9. The second question is about the approach of the welfare State and particularly the corporate body like Rajasthan State Road Transport Corporation. It does not befit to a welfare State to plead the case in a way, which may not be in the interest of the society. To start by saying that the accident has not occurred on account of the rash and negligent driving of the vehicle of the roadways and further to say that the vehicle was not involved and, in the alternative, to say that if the vehicle was involved, there was a case of contributory negligence and to deny every fact mentioned in the petition, does not give a good reputation to the Corporation like State Road Transport Corporation. Hon'ble Supreme Court in the case of Rajasthan State Road Transport Corporation, Jaipur v. Narain Shanker, 1980 ACJ 411 (SC), decided on 30th January, 1980, has deprecated the practice of contesting such cases and has remarked that the need of the time is that the Corporation should not under into callous litigation, but should give greater attention to the efficiency of service, including insistence on competent, cautious and responsible driving. This holds good even up to this date to a great extent and the need of the time is that the Road Transport Corporation should have the humane approach and act like general insurance companies. It is expected from the welfare State Corporation Bodies that they will devise a method for the

settlement of the cases outside the Court and they may rush at the door of the victim and pay compensation without inviting him to the Court.'

10. Admittedly, the appellant No. 1 was hospitalized and he could not prefer claim within 6 months. Sufficient cause for delay was pointed out but the learned Tribunal illegally rejected the same. The Tribunal has to exercise the benevolent provision judicially but not arbitrarily and capriciously.

11. It has been noted that approach of the Tribunal is very casual. It is unfortunate that the people who suffered injuries and remained in hospital and after discharging from the hospital filed an application for claim before the Tribunal, have been deprived for a long time and have not received a single pie and waiting for justice.

12. In the case of K. Trivikram v. Mohd. Kareem Khan and Anr., reported in 2001 AIR SCW 4775, where the appellant applied for an award of compensation in respect of a motor accident in which he sustained injuries and according to him the injuries resulted in permanent disability and he had to undergo a major operation, his claim for compensation was dismissed for default and he then moved an application for restoration of the claim and that was also dismissed and thereafter against that order he filed a revision before the High Court and the High Court also did not interfere, the Hon'ble Supreme Court in Paragraph 3 of the order held as under:--

'3. We too agree that there were laches on the part of the appellant in prosecuting his case but in the peculiar situation in which the unfortunate appellant was placed those laches should not have been the main decisive ground for non-suiting him once and for all. If his physical condition is what has been pictured by him that would certainly give some room for leniency in so far as the default committed by him concerned. We do not think it necessary in the fact situation to adopt a rigid attitude to him. We, therefore, deem it necessary in the interest of justice to restore the claim made by him.'

13. It has been noted that the Tribunals are taking too technical view resulting in miscarriage of justice to the needy and downtrodden. The benevolent provisions

are given go bye. In the opinion of this Court the objects can well be achieved by organizing camps and re-oriental courses for training to the judicial officers who have to deal with the cases. In the opinion of this Court, there is a need of society that the Tribunals should have a humane approach and they should have the attitude to work for the society and they should not be technical or hyper-technical in performing their duties. In this case, the Tribunal has taken unwarranted approach holding that the joint application tiled by the victims of the accident is not maintainable.

14. It is pertinent to mention here that this Court gave various opportunities to the the Union of India to arrive at a settlement if possible but the learned Counsel for the Union of India submitted that the Department has difficulties and many a times there are audit objection. If the Department has difficulty even in a case where the driver pleaded guilty and has been convicted, it has to sort out its own ways. This Court would not like to pass any judicial order one way or the other and leave it to the discretion of the Government. The Central Government may examine and may issue such direction in this regard, which they think fit and proper.

15. Having considered the facts and circumstances of the case and material on record, the impugned order is set aside. Since the matter is of 1983 and much time has elapsed, the case is remanded back to the Claims Tribunal with a direction that the Tribunal shall decide the claim application as early as possible preferably within four months.

16. Learned Counsel for the parties shall secure the parties' presence in the Tribunal on 26th March, 2003. Record be also sent back per messenger.

17. The parties may settle the matter before the Tribunal.

18. Copy of the order of Tribunal be made available to the Registrar General of this Registry.

19. With the aforesaid observations and directions the appeal is disposed of with costs of Rs. 1000/- payable by the Union of India.

