

Ramkumar Vs. Umedram Bora and Co. and ors.

Ramkumar Vs. Umedram Bora and Co. and ors.

SooperKanoon Citation : sooperkanoon.com/499655

Court : Madhya Pradesh

Decided On : Jul-18-1983

Reported in : [1986]59CompCas892(MP)

Judge : Gulab Gupta, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110A(3)

Appeal No. : Miscellaneous First Appeal No. 153 of 1977

Appellant : Ramkumar

Respondent : Umedram Bora and Co. and ors.

Advocate for Def. : R.P. Agarwal, Adv.

Advocate for Pet/Ap. : R.K. Tankha, Adv.

Disposition : Appeal allowed

Judgement :

Gulab Gupta, J.

1. This is an appeal under Section 110D of the [Motor Vehicles Act, 1939](#), by a claimant who suffered not only personal injuries in an accident on January 23, 1974, but also lost his cart, bullock and grain and whose claim for compensation has been dismissed by the Claims Tribunal, Satna, as barred by limitation.

2. The brief facts either admitted or found are that on January 23, 1974, the appellant was driving his bullock cart from his village Birhooli to Satna on Simaria road, when truck No. MPA 7822 which was being driven by respondent No. 2, came from behind the cart, dashed against it and went away. It was a 'hit and run' accident. The result of the accident was that one of the bullocks died, the bullock cart was smashed, 10 bags of paddy and 2 bags of wheat got scattered on the road, the second bullock and the claimant and his brother, Vijayakumar, received injuries. It appears that the report of the accident was lodged on the same date at police Chowki Kolgawa. The injured persons were sent for medical examination. The body of the dead bullock was sent for post mortem examination. The police thereafter lodged a criminal case which perhaps is still pending. The appellant filed his claim before the Tribunal on January 3, 1975. He also filed an application for condonation of delay duly supported by an affidavit. The claim and the application for condonation of delay were both opposed by the respondents. The Tribunal in its impugned award held that no sufficient cause was made out for condoning the delay in filing the claim. The Tribunal, however, found that injuries were caused on account of an accident which was due to rash and negligent driving. The Tribunal, in fact, calculated the amount of compensation to which the claimant may be held entitled. It thought that Rs. 700 on account of waste of grains, Rs. 1,000 on account of death of bullock, Rs. 500 damage to the bullock cart and Rs. 500 for personal injuries, i.e., a total amount of Rs. 2,700, would be sufficient compensation in the instant case. Though the Claims Tribunal held that the application was properly made on behalf of the claimant's brother, Vijay Kumar, no amount was determined payable to this Vijay Kumar due to injuries to his person. Since the delay in filing the claim has not been condoned, nothing has been awarded. Being aggrieved by this award, the claimant has approached this court by filing the present appeal.

3. The only question involved in this case is whether there was sufficient cause for condonation of delay in filing the claim application. Since the accident had taken place on January 23, 1974, and the claim application was filed on January 3, 1975, it was admittedly barred by limitation and unless sufficient cause was made out as required by the proviso to Sub-section (3) of Section 110A of the Motor Vehicles Act, the claimant cannot succeed.

4. It is well settled that ' sufficient cause ' means some cause beyond the control of the party and that for successfully invoking the aid of the court, the party must have acted with due care and attention. It is equally well settled that the words ' sufficient cause ' used in the proviso should receive a liberal construction so as to advance substantial justice. What has, therefore, to be seen is whether the claimant has acted with reasonable diligence in approaching the Tribunal or has been negligent or indifferent in proceeding with the same. While considering such a case the court's interpretation must be in accordance with judicial principles even at the risk of injustice and hardship to the appellant who may have a good case on merits but who is out of time and has no valid excuse for delay. The court must guard itself against the danger of being led away by sympathy. It is, therefore, clear that sympathy of the court alone cannot be a ground for imposing any liability upon the respondents. Keeping this principle in mind, let us examine the facts of this case to ascertain if the claimant has been able to show sufficient cause for condonation of delay. In his claim application, the appellant has given two reasons for not filing the claim in time. First reason given was that after the accident up to November, 1974, both brothers were ill and unable to move. It was also stated that because of their poverty, they were not in a position to get medical aid in the hospital at Satna and hence they were lying at home and getting some treatment. The other ground was that the representative of respondent No. 1, the owner of the vehicle, had visited the place and wanted the matter to be settled by way of private settlement provided the criminal case was not filed. It was alleged that since the criminal case was filed, the compromise talk failed in December, 1974. These allegations were denied by the respondents. More or less similar grounds were stated in the application for condonation of delay. Medical reports, exhibits P-1 and P-2, show that the claimant and his brother had received injuries. So far as the claimant was concerned, there were 8 injuries on his person when he was examined on January 23, 1974, by the medical officer. The injuries were simple in nature and yet the claimant was admitted in the hospital for treatment. Dr. Chaturvedi was examined before the Tribunal as witness No. 5 for the claimant and confirmed his earlier report. The report and the evidence of Dr. Chaturvedi would establish that besides lacerated wounds and abrasions, the claimant had made complaints of pain in right shoulder and chest. Dr. Chaturvedi, however, did

not discover any abnormality by clinical examination. It is in evidence that both the brothers were discharged from the hospital after some time. So far as the time taken in obtaining medical aid in the hospital is concerned, there can be no dispute that it would be a good ground for condonation of delay. In fact, by a series of decisions of various High Courts, it is now established that if the injured person had to be admitted in a hospital or otherwise to undergo treatment for the injuries caused to him, it always affords sufficient ground for the delay in filing the claim being condoned. (New India Assurance Co. Ltd. v. Punjab Roadways, AIR 1964 Punj 235, Hindustan General Insurance Society v. Satish Chandra Paul, AIR 1972 Tripura 9, Subash Chander v. Ram Singh [1972] ACJ 58; AIR 1972 Delhi 189. General Manager, K.S.R.T.C. v. Sangappa Satalingappa Gouder [1979] ACJ 452 (Kar); AIR 1979 Kar 10. It also appears to be the trend that the delay which may be condoned need not necessarily be restricted to the period during which the claimant was in the hospital but may extend to the period for which he may have natural and reasonable explanation. (See Komal Charan v. State of U.P., AIR 1971 All 503, G. Gopalaswamy v. G. Navalgaria, AIR 1967 Mad 403 ; Swaran Kaur v. State of Punjab [1971] ACJ 287 (P & H). It has, therefore, to be seen whether there is evidence to show that the claimant was incapacitated even after he was discharged from the hospital. He went home where his condition became bad (para 1). In his cross-examination he stated that he dug a pit in the room and used the said pit as lavatory which used to be cleaned by his brother or sister. He admitted that even at home the doctor or compounder saw him but he could not name them. He also stated that he took medicines for about a year which his brother brought from Satna and was taking gurrh, piper, sonth even thereafter. He was not cross-examined about the type of illness. To the same effect is the evidence of Shuamsunder Pandey, who is an ex-military man and has stated that the claimant was not keeping good health and suffered from pain in chest and remained lying on bed. The evidence of Ramsewak is also similar though he stated in his cross-examination that the claimant remained lying on bed for about 2-3 months after being discharged from the hospital. Witness, Amritlal, stated that Ramkumar remained lying for 5-6; months after being discharged from the hospital. This witness is the brother of the claimant and had been looking after him during the illness. In cross examination, he has stated that Ramkumar was to be

helped and could not get up from the bed. A reading of the statements would show that the claimant had received injuries and had complained of pain in the chest on the date of accident itself. He was admitted in the hospital and was discharged after some time. No one has stated that he was discharged because he was fully cured. On the contrary, it is in evidence that even after being discharged from the hospital, he had to be treated in his home. There are minor variations about the period during which the person remained confined to bed in his house. But these variations to me, do not appear to be material. While appreciating the evidence of village people, who are illiterate, one has to ignore these minor variations particularly when the statement was being recorded after more than 2 years in the court. No evidence has been given by the respondents to contradict the effect of illness of the claimant or prove that he was capable of undertaking the journey from his village to Satna to prefer the claim application. In this view of the matter, it has to be held that the claimant was incapacitated on account of the injuries he had received in the accident and was not able to undertake the journey from his village to Satna. This, no doubt, would be sufficient cause for condonation of delay. Since the claimant has submitted that he was incapacitated up to November 19, 1974, and there is no evidence to the contrary, it must be held that he had sufficient cause for not filing this application up to November, 1974.

5. Even if the claimant is given advantage of the period up to November, 1974, he must further show sufficient cause for not filing this application immediately thereafter. Admittedly, the application was filed on January 3, 1975. The reason for this delay, as given by the claimant, is that compromise talks were going on and he had been promised some compensation out of court, though it was on condition that police authorities should not prosecute the respondents. According to the claimant, these talks failed in December, 1974, when the police started prosecution. Though in his evidence before the Tribunal, he stated on oath that compromise talks were going on, he has not been cross-examined on this point. The only witness for the respondent, Veerandrasingh, has denied such a talk. But he does not appear to be the proper person since he admits that one Mehta Saheb was the manager. Unfortunately the Tribunal has not examined this part of the cause shown by the appellant. In view of the evidence, the only conclusion possible is that some compromise talks had been initiated which were given up

because of the criminal prosecution started in December, 1974. It was natural and reasonable for him to wait during this period in the hope of getting compensation without going to the court of law.

6. In view of the aforesaid, I come to the conclusion that the claimant has been able to explain the delay up to the end of December, 1974. Since the claim application was filed on January 3, 1975, it must be held that the entire delay has been sufficiently explained. Since there was sufficient cause for condonation of delay, the application should have been allowed and claim entertained.

7. The learned counsel for respondent No. 2 vehemently submitted that this court should not reappreciate the evidence on record and should accept the conclusions of the Claims Tribunal as those conclusions are neither arbitrary nor otherwise unjustified. According to the learned counsel, the conclusions of the Claims Tribunal deserve to be given weight as no special circumstances have been shown to exist in this appeal. He relied upon the decision of the Supreme Court in *Radha Prasad Singh v. Gajadhar Singh*, AIR 1960 SC 115, in support of this proposition. Para 14 of this judgment lays down the law on the subject and is as under (p. 118):

' The position in law, in our opinion, is that when an appeal lies on facts, it is the right and the duty of the appeal court to consider what its decision on the question of facts should be ; but in coming to its own decision, it should bear in mind that it is looking at the printed record and has not the opportunity of seeing the witnesses and that it should not lightly reject the trial judge's conclusion that the evidence of a particular witness should be believed or should not be believed particularly when such conclusion is based on the observation of the demeanour of the witness in court. But, this does not mean that merely because an appeal court has not heard or seen the witness, it will in no case reverse the finding of a trial judge even on the question of credibility, If such question depends on a fair consideration of matters on record. When it appears to the Appeal Court that important considerations bearing on the question of credibility have not been taken into account or properly weighed by the trial judge and such considerations including the question of probability of the story given by the witnesses clearly indicate that

the view taken by the trial judge is wrong, the appeal court should have no hesitation in reversing the findings of the trial judge on such questions. Where the question is not of credibility based entirely on the demeanour of witnesses observed in court but a question of inference of fact from proved primary facts, the court of appeal is in as good a position as the trial judge and is free to reverse the findings if it thinks that the inference made by the trial judge is not justified.'

In the instant case, no question relating to the demeanour of the witness is involved and hence this court would not be bound by the finding of the Claims Tribunal merely because it has neither heard nor seen the witnesses. In fact, the question requiring consideration of this court depends on a fair consideration of matters on record. Since the probability of the story given by the witnesses clearly indicates that the view taken by the Claims Tribunal was not the correct view, this court would be fully justified in reading the entire record, appreciating the evidence and reaching its own conclusions. This is what has been done by me.

8. Normally, such a finding would require remand of the case to the Claims Tribunal for further decision. Fortunately for us, the Tribunal has calculated a sum of Rs. 2,700 payable to the claimant on account of injuries and damages caused to him and the learned counsel for the appellant seems satisfied with this amount and did not make any grievance. It is, therefore, held that the appellant-claimant is entitled to receive a sum of Rs. 2,700 on account of injuries and loss caused to him by the accident. The respondents are held jointly and severally liable to pay this amount. He is also entitled to interest at 6% per annum from the date of this order till realisation.

9. Consequently, the appeal is allowed, but without any order as to costs.