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SooperKanoon Citation : sooperkanoon.com/526307

Court : Orissa

Decided On : Feb-11-1981

Reported in : AIR1981Ori118; 51(1981)CLT379

Judge : N.K. Das, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110A and 116; [Limitation Act, 1963](#) - Sections 5

Appeal No. : Misc. Appeal No. 94 of 1978

Appellant : Brahmananda Sahu and anr.

Respondent : Halla Khanda and anr.

Advocate for Def. : P. Roy and ;S.B. Choudhury, Advs.

Advocate for Pet/Ap. : L. Patnaik, ;R.N. Mohanty and ;S.C. Sinha, Advs.

Disposition : Appeal allowed

Judgement :

N.K. Das, J.

1. This appeal arises out of a petition for claim under Section 110A of the Motor Vehicles Act. The accident in question took place on 28-5-1975 at 9 A. M. near village Dahalbag on the National High Way No. V. The deceased who was a boy

of nine years was proceeding on the road leading towards Cut-tack, At that time the truck bearing Registration No. ORU 2441 came at breakneck speed without blowing horn and dashed against the boy from behind resulting in instantaneous death. The claimants are the parents of the deceased boy. They have claimed Rs. 6,000.00, consolidated, as compensation.

The opposite parties -- respondents filed their respective written statements denying the allegations made in the claim petition and their stand is that the case is not maintainable and is barred by limitation. They further allege that the deceased boy while walking on the extreme left of the road suddenly came to the black top portion of the road in front of the vehicle, and by then it was impossible on the part of the driver to stop the vehicle and prevent the impact. They contend that the deceased was solely responsible for the accident and, as such, the claimants are not entitled to any compensation.

2. The learned Tribunal has come to the conclusion that the accident took place due to rash and negligent driving of the truck as evident from the evidence of P. Ws. 2 and 3 and there was absolutely no evidence to show that there was any contributory negligence on the part of the deceased boy. The vehicle was driven at a terrific speed without, blowing horn and dashed against the deceased boy from behind who was walking on the extreme left side of the road. The road was quite free at the relevant time, and the driver did not stop the vehicle after the accident and fled away with the vehicle. The deceased boy succumbed to the accident at the spot.

3. After going through the evidence, I am in agreement with the findings of the trial Court and there is no material to discard the testimony of P. Ws. 2 and 3. Non-examination of the driver without any possible reason also goes against the opposite parties. I am in agreement with the Tribunal that this is a fit case for applying the principles of *res ipsa loquitur* and I hold that the accident was due to rash and negligent driving of the driver of the vehicle and there was no contributory negligence on the part of the deceased boy.

4. The Tribunal has dismissed the application on the ground of delay that the delay has not been explained. The records of the lower Court on examination, clearly

show that a petition for condonation of delay was filed by the applicants at the time of presenting the application for compensation. This application was supported by an affidavit. The Tribunal condoned the delay with observation that it was subject to the law of limitation. If delay is condoned, I do not understand what is meant by 'subject to law of limitation'. Most probably, the Tribunal was of the view that the opposite parties after appearance would challenge the application on the ground of delay. There was an affidavit in support of the application for condonation of delay. No counter-affidavit was filed by any of the opposite parties. As no counter was filed, it should have been deemed that no objection was taken to the condonation of delay by the Court. A Division Bench of this Court has held in *Hemalata Devi v. Sk. Lokman*, AIR 1974 Orissa 24, that it is not left to the whim and fancy of the Claims Tribunal to decide whether to entertain the application or not despite the expiration of the prescribed period. But the Tribunal is bound to entertain the application when it is made out by the applicant that he was prevented by sufficient cause in making application in time. It is well settled that 'sufficient cause' means some cause beyond the control of the party and for successfully invoking the aid of the Court, the claimant must have acted with due care and attention. There is abundant authority that the strictness with which an application under Section 5 of the Limitation Act, is dealt with cannot be the standard by which exercise of discretion under the proviso to Section 110-A (3) of the Act has to be regulated. The purpose of the statute, the circumstances in which ordinarily a claim of this type is laid and similar factors have been taken into account by Courts dealing with claims and there seems to be consensus in the judicial view that the proviso should be liberally construed so that the legislative intention may be given effect to. Also in *N. K. V. Bros. (P) Ltd. v. M. Karumai Ammal*, AIR 1980 SC 1354, the Supreme Court has held that in granting the compensation the Tribunal should not generally enter into niceties and technicalities. But in the present case the affidavit has not been controverted and, as such, condonation of delay made by the Tribunal at the initial stage still stands and delay, in the circumstances of the case, should be held to have been condoned. Even apart from this having heard the counsel for both sides and on a consideration of the circumstances of the case and on perusal of the affidavit, I am satisfied that this is a fit case in which the delay is to be condoned.

5. In view of the findings made above, the finding of the learned Tribunal on Issue No. 1 is set aside. The finding as to the accident and responsibility stands unchallenged.

6. The claimants have claimed only Rs. 6,000/- as compensation. In view of the age of the boy and considering the age of the parents. I am of opinion that an amount of Rs. 6,000/- is not at all excessive. On the other hand, it can be considered to be low. Therefore, in my view, the amount claimed as compensation is to be allowed.

7. In the result, the Misc. Appeal is allowed. The decision of the Tribunal is set aside and the claimants are allowed compensation to the tune of Rupees 6,000/- with interest at 6 per cent per annum thereon from the date of the application till 1-3-1978, when the decision of the Tribunal was given. The Insurance Company -- Respondent No. 2 is directed to pay the amount, and it also undertakes to pay the amount within two months. Each party to bear its own cost throughout.