B.N.Singh and others Vs Motor Accident Claims Tribunal and others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Feb. 8, 1996

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 43 Rule 1
Uttar Pradesh Motor Accidents Claims Tribunal Rules, 1967 â€" Rule 1(c)

Hon'ble Judges: Shobha Dikshit, J

Final Decision: Allowed

Judgement

Mrs. Shobha Dikshit, J.
These writ petitions are directed against the judgment and orders dated 24595 and 13994 by which the request

for restoring the accident claim petitions which were dismissed in default on 161293 has been refused.

2. The petitioners filed a claim petition before opposite party No. 1 for the death of one of their kith and kin in an accident by a truck late Smt.

Madhu Singh and others. These claim petitions were respectively numbered as Claim Petition No. 48, 46 and 47 of 1989 and the same were

pending before the Motor Accident Claims Tribunal Act for adjudication. These cases were posted for final hearing before the learned Tribunal on

161293 when the same were dismissed in default for the reason that neither the petitioners nor their counsel was present on the said date.

However an application was moved the same day under Section 151/Order 9, Rule 9, CPC by the learned counsel for the petitioners for restoring

the same, stating therein that he went twice to the court in the forenoon of 161293 itself to check up the position of the case but since the learned

Tribunal was busy in dealing with some other matters, therefore, meanwhile he went away to another court to attend some other case in which he

was a counsel and thereafter when he came to the Court for the third time, to his dismay he found that all the three claim petitions had been

dismissed in default. It was further stated that the petitioners had not come personally that day as on their request and some personal difficulty in

coming from outstation he had undertaken to attend the case himself but inspite of being diligent and watchful the claim petitions were dismissed in

default during his aforesaid absence for a shortwhile. This application was resisted and objections were preferred by none else but the United India

Insurance Company. The objection which had been taken by the Insurance Company was that after the dismissal of the claim petitions the owner

of the vehicle involved has disentitled himself to the right of indemnity from the applicant Insurance Company. The further objection by the

Insurance Company was that the application for restoration has not been signed by the claimants and has not been presented properly. This

application alongwith the aforesaid objections was considered by the learned Tribunal and vide its judgment and order dated 13994 it rejected the

same on the ground that no justification or sufficient cause for the absence of the applicants has been shown. In the opinion of the learned Tribunal

the ground that because the learned counsel was busy in some other court at the time when the case was called out was not sufficient to restore the

petitions to its original numbers. Aggrieved by the aforesaid order, the claimants filed another application under Section 151, CPC, this time duly

supported by the affidavit of the claimants stating therein that the learned counsel engaged by them in these petitions could not appear when the

same were called out as he was busy in another court. Regarding their absence on that date it was stated that since they were in some personal

difficulty therefore they had sent due intimation to their counsel who had assured them that they need not come on that day and he shall appear and

conduct the case. This application was again opposed by the Insurance Company, opposite party No. 3, on the ground that the earlier order dated

13994 operates as resjudicata and the Tribunal has no jurisdiction to entertain fresh application for restoration. The learned Tribunal after hearing

the parties rejected this application also by the impugned order dated 24595. The main ground on which this application has been rejected is that

the application under Section 151, CPC is not maintainable and that once an application for restoration was rejected under Order 9 Rule 9 CPC,

it was open to the claimants/applicants to have preferred an appeal under Order 43 (1)(c), CPC. Aggrieved by the same the present writ petitions

have been filed.

3. Learned counsel for the petitioner challenges the impugned order dated 24595 on the ground that the application under Section 151, CPC is

maintainable and no appeal would lie against the same under Section 173 of the Motor Vehicle Act because dismissal of claim petitions in default

would not amount to an Award. It was further contended that the provisions of Order 43 (1)(c), CPC stand excluded from its application under

Rule 21 of the U.P. Motor Accident Claims Tribunal Rules, 1967. So far as the question of exclusion of the aforesaid provisions of the Code of

Civil Procedure is concerned, learned counsel for the petitioner has placed reliance on the decision by a Division Bench of this Court in the matter

of Om Prakash v. Smt. Rukmani Devi, 1982 Allahabad Law Reports, 524, wherein it has been ruled that to the proceedings before the Motor

Accident Claims Tribunal entire provisions of Code of Civil Procedure would not apply, rather only those provisions as mentioned in Rule 21, of

the U.P. Motor Accidents Claims Rules, 1967, would apply. The relevant Rule 21 of the U.P. Motor Accidents Claims Rules, 1967, reads as

under:

Ã¯Â¿Â½Code of Civil Procedure 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. Order V, Rules 9 to 13 and 15 to 33; Order IX; Order XIII, Rules 3

to 10; Order XVI Rules 2 to 21; Order XVII; and Order XXIII Rules 1 to 3.Ã¯Â¿Â½

4. These writ petitions have been resisted by the Insurance Company before this Court also by filing a counter affidavit and defending the

impugned order on the ground that the application under Section 151 CPC, preferred by the claimants was not maintainable and it was open to the

claimants to file an appeal under Section 173 of the Motor Vehicles Act.

5. I have heard the learned counsel for the parties and have perused the provisions of law as also the above noted decision. The provisions of Rule

21 are very clear and leave no scope for any doubt that the application of the provisions of Order 43 (1)(c) in this case stand excluded and

therefore the question of filing an appeal did not arise. Besides this when the claim petitions were dismissed in default on 161293 and application

for restoration under Order 9, Rule 9 CPC was considered and decided as maintainable then merely because that application was rejected, it

would not convert the dismissal in default into an award against which an appeal could lie. For these reasons the order passed by the learned

Tribunal is erroneous and contrary to law and thus is liable to be setaside.

6. There is yet another important aspect of the matter which requires notice. The facts stated hereinabove are not disputed between the parties

from which it is clear that the learned counsel appearing for the claimants was vigilant and had visited the court twice in the forenoon itself to attend

the matter but on both the occasions the learned Tribunal was busy with some other case, therefore, he went to attend another case in another

court in which also he was the counsel and when he returned back to find out the position of the claim petitions before the Tribunal, in the forenoon

itself, it was to his dismay that he found that all the three petitions had been dismissed in default. It is most unfortunate that the learned Tribunal in

the forenoon itself dismissed the claim petitions in default without even waiting for parties or their counsel to appear till 4 O"clock or till whatever is

the time of the sitting of the Tribunal. It is most unnatural and not as per normal practice to dismiss a case for default in the forenoon. At the top of

this when the application for restoration was moved by the learned counsel on that very day stating the aforesaid facts, the said application

remained pending and was decided as late as on 13994. This application was objected to by the Insurance Company. Since in the order rejecting

this application it was mentioned that it is not duly supported by the affidavit of the claimants therefore another application was moved alongwith

the affidavit under Section 151 CPC, reiterating the same facts. This application was again objected to by the Insurance Company and the learned

Tribunal has taken not only an erroneous view but a very hypertechnical view. When an application under Order 9 Rule 9, CPC for restoration of

the petitions is rejected and another application is made for its restoration, the same shall also fall within the purview of Order 9 Rule 9, CPC read

with Section 141, CPC and not within order 43 Rule (1)(c) CPC inasmuch as the (sic) is not to setaside the dismissal of a suit, in this case an

award, it is for an order to setaside dismissal of an earlier application. This application also remained pending and was decided on 24595.

7. There are various pronouncements of law by the apex court and the High Courts to the effect that the provisions of Motor Vehicles Act are to

be interpreted in the spirit in which the same have been enacted. The object and tha spirit behind this benevolent legislation is to relieve the distress

and the misery of the victims of the accident to their dependents and relations. It cannot be doubted that the manner in which the learned Tribunal

has acted and decided the matter of restoration of the claim petitions dismissed in default is simply to nullify the whole effect and purpose of this

legislation. It is also very unfortunate that the Insurance Company which had a very laudable role to play in the payment of compensation to the

injured and the dead has been resisting the restoration of the application dismissed in default for the alleged nonappearance of the counsel when the

case has been called. I am also constrained to hold that even in the first application moved for restoration of claim petitions on 161293 the learned

counsel had shown "sufficient cause" for his temporary absence but the learned Tribunal held that the cause shown is not sufficient, such a finding is

wholly perverse and erroneous. The practice of dismissing the cases in default, merely on the ground of absence of the learned counsel, has been

deprecated by the apex court in its decision in the matter of Savitri Amma Seethamma v. Aratha Karthy, AIR 1983 SC 318. All said and done it

was too trivial a matter and is of no consequence for which the learned Tribunal has taken the aforesaid attitude in not restoring the claim petitions

to its original numbers. In the light of the aforesaid findings and observations the orders dated 161293, 13994 and 24595 are hereby quashed and

the claim petitions are restored to its original numbers. The writ petitions are allowed and cost of Rs. 2500/ (Two thousand five hundred)

(consolidated) is imposed, which the Insurance Company respondent No. 3 shall be liable to pay. Since these matters are pending before the

Tribunal for the last six years, therefore, it is hereby directed that the same be decided as early as possible and not beyond the period of one year.