(1961) 10 MP CK 0006

Madhya Pradesh High Court (Indore Bench)

Case No: M.A. No. 116 of 1961

Iqubal Prakash Jwaladas		APPELLANT
	Vs	
State of M.P.		RESPONDENT

Date of Decision: Oct. 9, 1961

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110, 110F

Citation: (1962) JLJ 156 : (1962) MPLJ 465

Hon'ble Judges: V.R. Nevaskar, J; H.R. Krishnan, J

Bench: Division Bench

Advocate: K.A. Chitale, for the Appellant; Balwantsingh, Govt. Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Newaskar, J.

This petition for revision involves question as to jurisdiction of civil Courts to entertain a suit in respect of a claim for compensation relating to an accident which took place more than sixty days before the constitution of a Tribunal u/s 110 of the Motor Vehicles Act.

Facts giving rise to the present petition may briefly be stated as follows.

Plaintiff Iqabal Prakash Sachdeo was riding his scooter No. M. B. K. 3453 along the road near the Residency Indore on the 4th of November 1958 at about 2 p. m, when a collision occurred between his scooter and the Station Jeep No. M. B. K. 3858. The plaintiff fell down from his vehicle and sustained injuries. The Jeep belonged to the State Government and was being driven by one Ahmadali at the material time. The plaintiff, therefore, filed a suit in the Court of District Judge, Indore on 6-11-1959 for the recovery of Rs. 25,500 as compensation from the defendant on the ground that the vehicle belonged to the defendant and had been driven by the defendant''s

employee Ahmadali.

The suit was resisted by the defendant inter alia on the ground that inasmuch as Claims Tribunal had been constituted by the State of Madhya Pradesh as provided in section 110 (1) of the Motor Vehicles Act and notification specifying the area of its jurisdiction had been issued which was No. 3063-3249/II-A (2) 59, dated 7-8-1969, the jurisdiction of civil Courts to entertain the suit is barred u/s 1I0-F of the Motor Vehicles Act, 1939.

The issue covering the above contention of the defendant was treated as preliminary and was taken for consideration by the learned 2nd Additional District Judge, Indore, who was in charge of the case. He upheld the contention of the defendant and on 4-8-1960 recorded the finding that the civil Courts'' jurisdiction to entertain this claim for compensation is barred u/s 110-F of the Motor Vehicles Act. In consequence of this finding he by his order dated 5-8-1960 directed the plaint to be returned to the plaintiff for its presentation to proper Court.

Aggrieved by this order the plaintiff presented the present petition for revision on 12-12-1960. On 5-9-1961 when the petition was taken up for hearing a preliminary objection was raised on behalf of the opponent by the learned Deputy Government Advocate that a revision petition is incompetent against the order directing return of the plaint for presentation to proper Court. The order it is said being one under Order 7, rule 10, CPC an appeal lay against this order. Seeing the force of this contention the learned counsel for the petitioner submitted an application on the following day that is on 6-9-1961 for converting the revision petition into appeal. On hearing both the parties we decided to accede to the appellant''s request since no question of limitation or jurisdiction was involved. The petition, therefore, is treated as an appeal and is being heard and disposed of accordingly.

On behalf of the appellant Mr. Chitale contended that on true construction of section 110-F read with sections 110 and 110-A of the Motor Vehicles Act a claim for compensation cannot be preferred to the Tribunal constituted u/s 110 of the Act in respect of accidents which had occurred more than sixty days before the constitution of the Tribunal by reason of section 110-A (3) as a matter of right. The proviso following section 110-A (3) of the Act, according to the learned counsel applies to those actions which can be preferred before the Tribunal as a matter of right within sixty days of the occurrence of the accident but which could not be so preferred due to sufficient cause peculiar to the claimant. The proviso can be invoked only in those cases where, but for a sufficient cause which intervened and prevented him from coming within sixty days to the Tribunal, he could have preferred his claim to it within 60 days. Consequently it is contended that section 110-A (3) proviso cannot be applied to the cases of accidents which had occurred more than two months before the constitution of the Tribunals. In such cases since the right of a claimant regarding compensation claimable by him cannot be said to have been extinguished he can prefer his claim before the ordinary Courts within

ordinary period of limitation allowable under the general law of limitation. The learned counsel in this connection referred to the decision of the Full Bench of Nagpur High Court reported in Badkakiaan v. Shridhar AIR I960 Nag. 177. Further relying upon the decision of the Supreme Court in Qurdwara Parbandkak Committee v. Shiv Rattan Dev AIR 1966 S C 676 and that of the Privy Council in Secretary of Slate v. Mask and Co. AIR 1940 PC 106, the learned counsel contended that exclusion of jurisdiction of civil Courts in respect of suits which are normally within their jurisdiction can be brought about only by clear and unambiguous language or by necessary implication. Therefore, according to him, in the absence of dear and unambiguous language in sections 110-A and 110-F of the Motor Vehicles Act excluding the jurisdiction of civil Courts even in respect of claims relating to accidents which had taken place more than sixty days before the constitution of the Tribunal, that jurisdiction ought to continue. Any construction of these provisions which throw an impossible burden upon a claimant to prefer a claim for compensation within two months of the accident to a Tribunal which itself had not come in existence within that period has to be avoided. Reliance was placed for this view upon the decisions reported in Makar Ali v. Sarfuddin ILR 50 Cal. 116 : AIR 1923 Cal. 185 and Tirumalaisami Naidu v. Subramanian Chettiar ILR 40 Mad. 1009.
The learned Government Advocate Mr. Balwantsingh on the other hand emphasised that the proviso to section 110-A (3) enables a suitor to prefer a claim to the Tribunal even in respect of accidents which might have occurred more than sixty days before its constitution. The fact that the Tribunal itself had not come into existence within two months of the accident would, according to the learned counsel be a sufficient ground for invoking powers of the Tribunal to condone the delay and since the discretionary power exercisable by the Tribunal under the proviso has to be in accordance with well established judicial principles, there is no reason to suppose that the Tribunal may not do what in law it is expected to do. The discretionary power cannot be assumed to depend '' upon the whim or caprice.

In order to appreciate the respective submission of the learned counsel on either side it will be material and useful to refer to the relevant provisions of the Motor Vehicles Act, 1939.

Section 110 (1) of the Act authorises a State Government to constitute one or more Motor Accidents Claims Tribunals for specified areas by notification in the Official Gazette. The function of such Tribunal is to adjudicate upon claim for compensation in respect of accidents involving death of or bodily injury to, persons arising out of the use of motor vehicles. Section 110-A (1) indicates who can make an application for a claim for compensation in respect of the motor accidents referred to in section 110 (1). Section 110-A (2) provides that such application has to be made to the Claims Tribunal having jurisdiction over the area of the accident. It also provides that the application should conform in form and particulars to the one prescribed by rules made under the Act. Then comes section 110-A (3):-

No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident;

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

Thus according to this provision a claim for compensation in respect of a motor accident has to be made to the appropriate Tribunal by means of an application in the prescribed form containing prescribed particulars within sixty days of the occurrence of the accident although where there is sufficient cause, for the claimant for not being able to do so within that period it is competent for the Tribunal to entertain such application even afterwards,

Section 110-F provides for the bar of jurisdiction of civil Courts in respect of above claims. It provides :-

Where any Claims Tribunal has been constituted for any area, no civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claims for compensation shall be granted by the civil Court.

On analysis of the above provision it seems that bar of jurisdiction of civil Courts occurs when the following conditions are fulfilled-

(1) Claims Tribunal is constituted which can entertain an application u/s 110-A (1).

(2) The said Tribunal can entertain and adjudicate upon such a claim.

Both the above conditions must co-exist for the bar of civil Court''s jurisdiction to operate. Thus if the Claims Tribunal is not constituted at all, civil Court''s jurisdiction to entertain and adjudicate upon claims for compensation relating to motor accidents is not affected in spite of the fact that the Act has been brought into force. Even if the Tribunal is constituted but it cannot entertain and adjudicate upon a claim due to the fact that an application for compensation could not have been made by the claimant to the Tribunal within sixty days at all apart from circumstances peculiar to the claimant, then too the bar would not operate.

It may be contended that the power to adjudicate upon a claim even in respect of accidents which had taken place more than two months before the constitution of the Tribunal would be there by reason of proviso to section 110-A (3) because there is nothing in the wording of the said proviso that it is not to extend to accidents which might have taken place more than two months before the constitution of the Tribunal. Sufficient cause, it is said, may be common to all such claimants who have to prefer their claims in respect of accidents which had taken place more than two

months before and that cause may well be that all of them could not apply within sixty days of the accident because the Tribunal itself was non-existent within that period. To my mind this contention is untenable because the main part of section 110-A (3) as well as the proviso underneath presuppose existence of the Tribunal at the time the application could ordinarily be made to it but which could not be so made because the applicant was prevented from doing so for sufficient cause peculiar to him. Non-existence of the Tribunal, in my opinion, cannot be treated as such sufficient cause peculiar to the applicant. Considering the matter from another point of view to require a claimant to apply for a claim within sixty days of the accident before a Tribunal which itself did not exist within that period, is to ask him to do the impossible, such cannot be the intention of the Legislature. We may refer in this connection to the decision in Makar Ali v. Sarfuddin ILR 50 Cal. 115 : AIR 1923 Cal. 186. In that case the facts were that consequent upon a suit for enforcement of a mortgage by the sale of the mortgaged property a decree was passed in mortgagee''s favour. In the execution which followed the property was put to auction and was purchased by a third party in whose favour a sale certificate was granted on 11-12-1908. Thereafter the auction-purchaser obtained symbolical possession but was unable to obtain actual possession. He then filed a suit for the purpose on 16-4-1917, The suit was resisted by the defendants in possession on the grounds that the original mortgagor had no title. The auction-purchaser besides asking for possession had also claimed in the alternative for refund of his purchase-money from the decree-holder. This claim was resisted by the latter on the ground that this could not be done by means of a separate suit. Such a suit is barred under the Code of 1908 which was applicable when the suit was filed. It was clear that on 11-12-1908 the auction-purchaser acquired a right under the Code of 1882 which was then in force to claim refund of purchase-money from the decree-holder. If then the Code of Civil Procedure, 1908 is held to apply and the remedy of the auction-purchaser was by means an application under Order 21, rule 91 then on the date of the commencement of the Code i. e. on 1-1-1909 his application for refund would be barred because for such an application period of limitation prescribed by Article 166 is 30 days from the date of sale. It was in these circumstances held that a repealing enactment cannot be given retrospective operation so as to impose an impossible condition on the sale or forfeiture of vested right. Accordingly it was held that since applying the Code of 1908 involved imposition of impossible condition with the risk of loss of a vested right, the earlier Act of 1882 was applicable and the action though commenced long after the coming into force of the Code of 1908 was governed by the earlier Code. The principle of this decision can well be applied in the present ease because to require a claimant to apply to the Tribunal within sixty days of the accident when the Tribunal itself did not exist within that period is to ask him to do the impossible and consequently we cannot apply the provisions of section 110-A (1) and (3) to this claim for so to do means to do the impossible. The law applicable in such a case is the pre-existing law and a suit in the ordinary civil Court is clearly maintainable. Similar is the view taken in another decision reported

in Tirumalaisami Naidu v. Subramanian Chettiar ILR 40 Mad. 1009. In the first of these two cases the decision of the Judicial Committee of the Privy Council in the case of Colonial Sugar Refining Go. v. Irving 1905 A C 369 was followed.

Thus both on the construction of the material provisions as also on general principles relating to retrospective operation of a statutory provision the present suit is maintainable. The order passed by the Court below directing the return of the plaint to a proper Court is set aside and the case is sent back to the trial Court for its disposal in accordance with law. The appellant is entitled to costs of this appeal from the respondent.