

(2012) ACJ 1773

Chhattisgarh High Court

Case No: M.A. No. 641 of 2001

Rajesh

APPELLANT

Vs

Goparam and others

RESPONDENT

Date of Decision: Oct. 21, 2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 9 Rule 9#Evidence Act, 1872 â€” Section 165#Motor Vehicles Act, 1988 â€” Section 140, 158(6), 162, 166, 166(1)#Penal Code, 1860 (IPC) â€” Section 279, 304A, 337, 338

Citation: (2012) ACJ 1773

Hon'ble Judges: Manindra Mohan Shrivastava, J; I.M. Quddusi, J

Bench: Full Bench

Advocate: Sanjay K. Agarwal, for the Appellant; Abhishek Sinha, for the Respondent

Final Decision: Allowed

Judgement

I.M. Quddusi, J.

The aforementioned three appeals are being decided by this common order as they arise from the common order dated

27.8.2001, passed by the First Additional Motor Accidents Claims Tribunal, Mahasamund, dismissing claim petitions as barred by res judicata.

The claim cases were filed by the respective claimants in regard to the accident which occurred on 17.2.1999 by the vehicle Tempo Trax, bearing

registration No. MP 23-GA 3578.

2. The brief facts, in nutshell, are that on 17.2.1999, Sated Rana, Purushottam Pradhan, Goverdhan Sahu, Sukhdeo Mishra and their colleagues

were returning to their village by Tempo Trax via National Highway 6. When Tempo Trax reached Kodar Nala culvert, the truck bearing

registration No. RJ 19-G 0351, coming from the opposite direction, being driven in a rash and negligent manner by its driver, hit Tempo Trax. In

that accident Purushottam Pradhan and Safed Rana died, whereas Goverdhan Sahu, Sukhdeo Mishra and others received grievous injuries. The

offence was registered in Tumgaon Police Station against Goparam, respondent No. 1, in Crime No. 17 of 1999 under sections 279, 337, 338

and 304A of the Indian Penal Code.

3. M.A. No. 641 of 2001 arises from the Claim Case No. 35 of 2000, filed by the legal heir of the deceased Purushottam Pradhan, wherein he

claimed total compensation of Rs. 12,02,000 under various heads.

4. M.A. No. 644 of 2001 arises from the Claim Case No. 33 of 2000, filed by the legal heirs of the deceased Safed Rana, wherein they claimed

total compensation of Rs. 21,50,000 under various heads.

5. M.A. No. 645 of 2001 arises from Claim Case No. 34 of 2000 filed by the injured Goverdhan Sahu, wherein he claimed total compensation of

Rs. 4,83,000 under various heads.

6. Learned Tribunal has dismissed all the three claim cases filed by the respective claimants on the ground that applications are barred by res

judicata. The Tribunal observed that earlier the claim cases were filed by the same claimants for the same accident which were dismissed on

13.5.1999 on the ground that the claimants did not file copy of F.I.R., post-mortem report, driving licence and certified copy of the insurance

policy. Those claim cases were unregistered, M.J.C. Nos. 2, 3 and 4 of 1999, filed by the respective claimants for restoration of their unregistered

claim petitions, were also dismissed on 1.7.2000.

7. We have heard the learned counsel appearing for the parties and perused the papers available on the record of the Tribunal.

8. It is noticed that the earlier claim petitions were not even registered and were dismissed in the absence of claimants for non-prosecution on the

ground that copy of F.I.R., post-mortem report, driving licence and certified copy of the insurance policy were not produced with the claim

petitions.

9. Before proceeding any further, it is necessary to peruse the relevant provisions of law (sections 168 and 169 of the Motor Vehicles Act, 1988);

which are quoted hereinbelow:

168. Award of the Claims Tribunal.-- On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of

the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as

the case may be, each of the claims and, subject to the provisions of section 162, may make an award determining the amount of compensation

which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims

Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of

them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person,

such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent

disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of

fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the

date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

169. Procedure and powers of Claims Tribunals.--(1) In holding any inquiry u/s 168, the Claims Tribunal may, subject to any rules that may be

made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of

witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed;

and the Claims Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal

Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for

compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

Rules 223, 224, 226 and 227 of Madhya Pradesh (Chhattisgarh) Motor Vehicles Rules, 1994, being relevant are extracted below:

223. Examination of applicant.--On receipt of an application under rule 220 the Claims Tribunal may examine the applicant on oath and the

substance of such examination shall be reduced to writing and shall be signed by the Claims Tribunal.

224. Summary dismissal of application.--The Claims Tribunal may after considering the application and the statement of the applicant recorded

under rule 223 dismiss the application summarily, if for reasons to be recorded in writing, the Claims Tribunal is of the opinion that there are no

sufficient grounds for proceeding therewith:

Provided that the Claims Tribunal shall not reject the application made for compensation u/s 140 on the grounds of any technical defects but shall

give notice to the applicant and get the defects rectified.

226. Obtaining of information and documents necessary for awarding compensation u/s 140.--The Claims Tribunal shall obtain whatever

information and documents which may be found necessary from the police, medical and other authorities and proceed to award the claim whether

the parties, who were given notice, appear or not on the appointed date.

227. Judgment and award of compensation u/s 140.--(1) The Claims Tribunal shall proceed to award the claim of compensation u/s 140 on the

basis of:

(a) Application and statement of the parties;

(b) Accident information report in Form 54 of the Central Rules or certificate regarding ownership and insurance particulars of the vehicle involved

in the accident, obtained from the registering authority;

(c) First information report;

(d) Post-mortem report or death certificate or injury report in Form M.P.M.V.R. 76 (Comp. B) by the Medical Officer who has examined the

victim.

(e) Any other information or documents obtained by the Tribunal under rule 226.

(2) The Claims Tribunal in passing orders shall make an award of compensation in respect of death or permanent disablement to be paid by the

insurer or owner of the vehicle involved in the accident, within a period of thirty days.

(3) The Claims Tribunal shall, as far as possible, dispose of the application for compensation within forty-five days from the date of receipt of such

application.

10. Hon"ble Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, has held that if a suit is dismissed for default of plaintiff's appearance or

otherwise, the decision not being on the merits would not operate as res judicata in a subsequent suit.

11. In Lukose v. Govindan Nair, 1990 ACJ 1097 (Ker), a Division Bench of the High Court of Kerala, relying upon a decision by a Division

Bench of Gauhati High Court in *Samsul Huda v. London & Lancashire Ins. Co. Ltd.*, AIR 1972 Gau 35, held that the Claims Tribunal may dismiss

an application summarily, if for reasons to be recorded, it is of the opinion that there are no sufficient grounds for proceeding therewith.

12. Hon"ble Supreme Court in *State of Maharashtra and another Vs. M/s. National Construction Company, Bombay and another*, , has held that

dismissal of the former suit on technical ground, without adjudication on merits, on the matter in issue, would not operate as *res judicata* so as to

bar a subsequent suit.

13. A Division Bench of this court in *Sukhdev Sai v. Executive Engineer, Public Works Department*, 2008 (3) CGLJ 46, has held that claim

petition could not have been dismissed by the Claims Tribunal on the ground of non-compliance of the provisions of rule 220 (3) of the M.P.

(C.G.) Motor Vehicles Rules, 1994.

14. In *Jai Prakash Vs. National Insurance Co. Ltd. and Others*, , the Hon"ble Supreme Court in paras 13 and 14 held as under;

(13) For complying with section 166(4) of the Act, the jurisdictional Motor Accidents Claims Tribunal shall initiate the following steps:

(a) The Tribunal shall maintain an institution register for recording the AIRs which are received from the Station House Officers of the police

stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be

recorded in the register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date

to the victim (family of victim in the event of death) and the owner, driver and the insurer of the vehicle involved in the accident. Once the

claimant(s) appear, the miscellaneous application shall be converted to claim petition. Where a claimant(s) files the claim petition even before the

receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall inquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an

accident (by any "police officer-advocate-doctor" nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary inquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also inquire and

submit the names of the dependent legal heirs.

(e) The Tribunal shall categorise the claim cases registered into those where the insurer disputes liability and those where the insurer does not

dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation

amount by a summary inquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame

not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with Claims Tribunals within 30 days of

determination. The Tribunals should ensure that the compensation amount is kept in a fixed deposit and disbursed as per the directions contained in

General Manager, Kerala State Road Trans. Corpn. v. Susamma Thomas, 1994 ACJ 1 (SC).

(h) As the proceedings initiated in pursuance of sections 158(6) and 166(4) of the Act are different in nature from an application by the victim(s)

u/s 166(1) of the Act, section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the

owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependants of the deceased victim and in

determining the quantum of compensation.

(14) The aforesaid directions to Claims Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it

deems fit as provided u/s 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as

mandated by sections 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal

shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of section 165 of the

Evidence Act, 1872, to determine the just compensation.

15. Therefore, as in the instant appeals, when the claim petitions were not even registered, dismissing an unregistered claim petition in the absence

of the claimants on the ground of non-filing of copy of F.I.R., post-mortem report, driving licence and certified copy of the insurance policy, is

definitely an order without adjudication on merits as also illegal and in utter violation of the provisions contained in sections 168 and 169 of the

Motor Vehicles Act, 1988 and the Rules made thereunder, referred to above. The impugned orders are also against the spirit of the order passed

by the Supreme Court in the case of Jai Prakash Vs. National Insurance Co. Ltd. and Others, .

16. The learned counsel appearing for the insurance company, respondent No. 3, has urged that the claimants-appellants had preferred

application, treated as under Order 9, rule 9 of the Civil Procedure Code, was dismissed on the ground that the same was barred by time by one

day. The appellants should have preferred an appeal against the same. The instant appellants thereafter filed second application which was not

permissible under the law.

17. To our mind when the first application was not registered at all and without registering the application Claims Tribunal dismissed the same in

absence of claimants for want of above-mentioned documents, i.e., copy of F.I.R., post-mortem report, driving licence and certified copy of the

insurance policy. In such circumstances though the application for restoration of the claim petition was moved but if the claimants did not prefer to

file the appeal or challenge the order rejecting the restoration application and prefer to file a second application, the same cannot operate as res

judicata at all. In our opinion though the appellants have not challenged that order as the order passed by the Tribunal was without adjudication on

merits and without registering a claim petition and in such circumstances the second application was maintainable.

18. The Tribunal has wrongly held that the second application was barred by res judicata. The Tribunal could have registered the claim application

and direct the police to produce the records in view of the provisions of rule 220 of the Rules, 1994. Further, u/s 168 of the Act, 1988 it is

provided that the Tribunal is to conduct an inquiry also.

19. In view of the above, we allow these appeals, set aside the impugned common order dated 27.8.2001 and remit the matter to the M.A.C.T.

concerned to consider and decide the claim petition afresh on merits, in the light of the observations made hereinabove, after restoring the claim

petition and providing opportunity to the parties to adduce additional evidence, if any. No order as to costs. The Registry is directed to send back

the papers, requisitioned from the Tribunal, forthwith.

Appeal allowed.