

(2011) 05 DEL CK 0328

Delhi High Court

Case No: CM (M) No. 1253 of 2010

Sudershan Singh

APPELLANT

Vs

Ravinder Uppal and Others

RESPONDENT

Date of Decision: May 26, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 151
- Motor Vehicles Act, 1939 - Section 110A(1)
- Motor Vehicles Act, 1988 - Section 140, 165(1), 166, 166(1)

Citation: (2013) ACJ 742 : (2011) 180 DLT 78 : (2011) 124 DRJ 407 : (2011) 5 ILR Delhi 700

Hon'ble Judges: Reva Khetrapal, J

Bench: Single Bench

Advocate: Anand Prakash, for the Appellant; Sanjay Agnihotri and Manjusha Wadhwa, for the Respondent

Final Decision: Dismissed

Judgement

Reva Khetrapal, J.

This petition is directed against the order dated 05.07.2010, passed by the Claims Tribunal, Tis Hazari Courts, Delhi, allowing the application filed by the Respondent No. 1 herein under Order VI Rule 17 read with Section 151 CPC for amendment of the petition.

2. The short question which arises for decision in the present petition is as to whether an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made by the father of the person injured without being duly authorized in writing.

3. The brief facts relevant for the decision of the petition are that a claim petition was filed on 12.07.2007 u/s 166 read with Section 140 of the Motor Vehicles Act, 1988 for grant of compensation against the Petitioner and the Respondents No. 2

and 3 on the ground that on 17.03.2007, when the Respondent No. 1 was on his way to Karol Bagh from his residence, the offending vehicle being driven in a rash and negligent manner by the Petitioner slammed into the Respondent No. 1 and ran over him, causing multiple injuries. The said petition was neither signed, nor verified, nor filed by the injured person, namely, Shri Ravinder Uppal, the Respondent No. 1. This necessitated the filing of an amendment application under Order VI Rule 17 read with Section 151 CPC. The Claims Tribunal in the impugned order noted as follows:

It is stated that during the cross examination of PW1, it was realized that though the present claim petition has been filed by the Petitioner through his father in a representative capacity but the said fact of representative character was not mentioned in the petition. Therefore, there is need for correction of the title and for the verification accordingly. The other amendment relates to the subsequent events in regard to claim of further treatment expenses and compensation for continued treatment.

Reply to the application has been filed by Respondent No. 3. Wherein it is stated that the present application has been filed merely to fill in the lacuna of the case. It would change the nature of the case and would also cause prejudice to the Respondents.

4. The Claims Tribunal, after hearing the counsel for the parties, allowed the first amendment as well as the second amendment. So far as the second amendment, which relates to the incorporation of subsequent events with regard to the further medical expenses incurred by the injured as a result of future complications and treatment of the injured is concerned, there is no dispute. The Petitioner, however, challenges the first amendment allowed by the Claims Tribunal on the ground that the amendment prayed for by the injured viz., the Respondent No. 1 and allowed by the Claims Tribunal has the effect of filling-up the lacunae left by the Respondent No. 1 and that too after the defence of the Petitioner had been put to the Respondent No. 1 in cross-examination, which is not permissible in law.

5. Mr. Anand Prakash, the learned Counsel for the Petitioner (who was the Respondent No. 1 in the Claim Petition), contended that serious prejudice would be caused to the Petitioner if the amendment prayed for by the claimant and allowed by the Claims Tribunal by the impugned order is not set aside by this Court. The counsel for the Petitioner also contended that in the cause title of the petition, it was nowhere indicated that the petition was being filed through the Power of Attorney of the Respondent No. 1 nor it was mentioned in the petition itself that it was signed and verified through the Power of Attorney and, as a matter of fact, there was no power conferred upon Shri Pradeep Kumar Uppal, the father of the Respondent No. 1-claimant, to sign, verify and institute the petition on behalf of the Respondent No. 1. The petition, having been filed by the father of the Respondent No. 1, without authorization from the Respondent No. 1, was not maintainable in law and hence,

liable to be dismissed.

6. Reference was made by the learned Counsel for the Petitioner to the provisions of Section 166(1)(d) of the Act, which read as under:

166. Application for compensation. - (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made

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(a)....

(b)...

(c)...

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be.

7. The learned Counsel for the Petitioner further contended that the amendment to the petition was sought at a belated stage after PW1-Shri Ravinder Uppal had been cross-examined on 15.05.2008, and had admitted that it was nowhere mentioned in the petition that the petition had been signed, verified and filed on his behalf through his father. Further, it was contended on behalf of the Petitioner that the original Power of Attorney purportedly executed by the Respondent No. 1/injured in favour of his father Mr. Pradeep Kumar Uppal, on which reliance was sought to be placed by the Respondent No. 1, was still not on record and, in this view of the matter, the amendment sought for by the Respondent No. 1 could not have been allowed by the Claims Tribunal.

8. To counter the aforesaid contentions of the learned Counsel for the Petitioner, Mr. Sanjay Agnihotri, the learned Counsel for the Respondent No. 1/injured contended that a bare glance at the petition was sufficient to show that though the petition was signed and verified by Shri Pradeep Kumar Uppal, in the affidavit filed in support of the petition the said Shri Pradeep Kumar Uppal clearly stated that he was the father and the Power of Attorney holder of the Petitioner/claimant and was well conversant with the facts of the case and competent to swear the affidavit. He further submitted that, inadvertently, in the petition, it was not mentioned that Shri Pradeep Kumar Uppal, was filing the petition on behalf of his son and this omission was sought to be corrected by filing the amendment application. He also submitted that the application under Order VI Rule 17 read with Section 151 CPC was filed by the Respondent No. 1 on 12th May, 2009, but despite opportunity granted for the purpose, the Petitioner did not choose to file any reply to the said application till the date of its disposal on 05.07.2010. On the other hand, after the amendment was allowed by the Claims Tribunal and the counsel for the Respondent No. 1 made a prayer before the Claims Tribunal that he wanted to re-examine the Respondent No. 1, that is PW1 - Ravinder Uppal with regard to the subsequent treatment undergone by him, the Petitioner raised no objection thereto, and as a matter of fact chose to

cross-examine the Respondent No. 1 at great length on the date fixed, that is, on 30th August, 2010. The learned Counsel submitted that for all the aforesaid reasons, it was too late in the day for the Petitioner to now raise objection to the amendment, when he had not even chosen to file a reply to the application for amendment.

9. Having heard the learned Counsel for the parties at length, this Court cannot help but observe that the General Power of Attorney relied upon by the Respondent No. 1, authorizes the father of the Respondent No. 1 - Shri Pradeep Uppal to sign, verify, present, appear and pursue all kinds of suits, applications, affidavits, reviews, petitions, appeals, notices etc., on behalf of the Respondent No. 1 in all courts and concerned departments in respect of the motor cycle of the injured, but no authorization is given to Shri Pradeep Uppal thereby to institute a claim petition for compensation on account of the injuries sustained by the Respondent No. 1. Be that as it may, the said Power of Attorney, to my mind, is not a relevant document, pertinent to the controversy in issue, and, in any case, only a photostat copy thereof is placed on record.

10. A plain reading of Sub-Section 1(d) of Section 166 of the Motor Vehicles Act, 1988 shows that an application for compensation arising out of an accident may be filed by any agent duly authorized by the person injured and in the case of a fatal accident, by all or any of the legal representatives of the deceased, as the case may be, but the said section nowhere envisages that such authorization should be in writing. If the legislature intended that the person injured should authorize his agent in writing to institute a claim petition on his behalf, it would have stated so in Clause (d) of Section 166(1) itself, but the words "in writing" are conspicuously absent from the said Sub-section.

11. The Motor Vehicles Act, 1988, moreover, being a beneficent piece of legislation, must be so construed so as to further the object of the Act. The object of the Act, clearly, is to provide compensation to the victims of a motor accident. If the grant of such compensation to motor accident victims is hemmed in by procedural and other technicalities, the purpose of the Act is liable to be defeated. Even otherwise, it is well-settled that strict rules of pleadings and evidence are not to be applied in motor accident claims cases. Procedural rules, even in civil cases, have been held to be hand-maidens of justice, which are not to be allowed to obstruct the course of justice. In a motor accident case, this applies with greater force. Take the example of an injured victim, who is physically and mentally unfit to file a claim petition, or is in coma, or is on the brink of collapse, can such a victim institute a claim petition of his own? The answer, quite obviously, must be an emphatic "No". In such circumstances, it is only a parent or a spouse or a near relative who can do so on his behalf. Sometimes, motor accident victims are known to lie in hospital for several months or to remain bed-ridden for years together. Are such victims to be denied the expenses for their medical treatment, attendant charges and claims under other heads merely because they cannot authorize in writing a member of their family to

institute a petition on their behalf? To construe the provisions of Section 166(1)(d) in such a narrow and pedantic manner would be a travesty of justice.

12. In the instant case, the Petitioner is stated to have undergone 22 surgeries and is still stated to be undergoing treatment. The record bears out the fact that he was crushed by the offending truck of Tata make, which is a heavy vehicle, resulting in grave injuries on his person. In such circumstances, the petition was signed, verified and instituted by his father by prominently highlighting in Column No. 1 thereof the name of the injured as Ravinder Uppal, in which column the name of the victim and the name of the victim's father are both set out but the name of the victim is in bold print. The affidavit filed in support of the petition further clarifies that the petition is being filed by the father of the victim. In such circumstances, the allegation that there was concealment of the true facts is entirely misplaced more so, as at the time of evidence, the claimant himself appeared in the witness box as PW1. It was only when he was cross-examined that he became aware of the fact that the averment that his father had been duly authorized by him to institute the petition on his behalf had not been made in the petition. He, accordingly, moved an amendment application to which the Petitioner (the Respondent No. 1 in the claim petition) chose not to file a reply. Technically, at this point of time, the Petitioner waived his right to file a reply and it is no longer open to him to challenge the amendment at the appellate stage, more so, when he has thereafter cross-examined the claimant extensively.

13. In the case of [United Bank of India Vs. Naresh Kumar and others](#), a suit was instituted by a person who was not duly authorized on behalf of the public corporation to file the plaint on its behalf. While holding that procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause, the Supreme Court explicated that even when the trial court finds that the plaint is not duly signed and verified by a competent person, the appellate court in exercise of its power under Order 41 Rule 27 (1) (b) CPC can require a proper Power of Attorney to be produced or can order a competent person to be examined as a witness to prove the ratification. As already stated, a claim petition stands on a higher pedestal than a civil suit, the same being a petition filed under an Act the intent of which is to confer benefit on the victims of motor accidents. What applies to the institution of a plaint will, therefore, apply with all the more force in the case of a motor accident claim case.

14. In the case of [Sri Binod Chandra Goswami Vs. Dr. Anandi Ram Baruah and Another](#), the following apposite observations were made by a Single Bench of Guwahati High Court:

I have considered the submission made on behalf of the Petitioner and the opposite party and have perused the impugned order and other materials on records. Technically the impugned order does not suffer from any infirmity. But the provisions of law are not to be observed as ritual. There lies the legislative

intendment as well as juristic principles beneath the words of the provision of law. From a plain reading of Section 166 of the M. V. Act, it becomes apparent that legislative intendment regarding entertaining application claiming compensation by the tribunal is very liberal. Sub-section (4) of Section 166 empowers the Tribunal to treat the report filed by the police officer regarding an accident as if it were an application under the provisions of the M. V. Act. What care is to be taken by the Tribunal is to see that no person other than the person entitled to compensation manages to get away with the compensation by impersonation. In the case wherein the application is made by a person other than the person entitled to the compensation, without being authorized, only course for the learned Tribunal may not be to reject the application. The learned Tribunal may treat the application as if it was preferred by the person entitled to compensation if subsequent to the filing of such claim application, the real claimant appears before the Tribunal and endorses the action taken by the unauthorized person claiming compensation. Legislative intendment to provide immediate relief to the injured person as contemplated u/s 140 of the M. V. Act cannot be allowed to be sacrificed at the altar of technicality.

In the instant case, no doubt, claim application was made by the Petitioner without obtaining prior authority from the injured. But if the learned tribunal is satisfied that subsequently the injured has appeared before it by his subsequent act of appointing the Petitioner as his constituted attorney, the Tribunal may treat the application as if it were, filed by the injured through a duly authorized person.

15. A division bench of the Karnataka High Court in the case of [Malini Muralidharan Nair and Others Vs. Geetha Transport Co. and Others](#), while considering the provisions of Section 110-A (1) (c) of the Motor Vehicles Act, 1939, which are in pari materia to the provisions of Section 166(1)(d) of the Motor Vehicles Act, 1988 observed as follows:

The expression "duly authorized agent" contained in Section 110-A does not mean that authorization should always be in writing. It includes a person having an implied authority to claim compensation for the one who is injured in the accident or even for the legal representatives of a deceased person. We have to conceive the situation where the claimant is injured, suffered severe injuries resulting in his becoming physically or mentally handicapped, to apply or to execute an authority and in such a case if we take that there should be written authority, it may frustrate the whole object of creating the special Tribunals, for quick justice avoiding technicalities. The Section does not provide or require that authority must be in writing. The authority may be implied from earlier or subsequent conduct as well of the person on whose behalf the claim petition had been filed by another under implied authority.

16. In view of the aforesaid, I am of the considered opinion that in the present case, where the injured/Respondent No. 1 had sustained grievous injuries in a motor

accident allegedly on account of the recklessness of the Petitioner-driver and is undergoing treatment till date, hyper technicalities cannot be allowed to deflect the course of justice. Even otherwise, the interpretation sought to be placed on the provision of Section 166(1)(d) in the instant case is not correct, for the reason that the said section nowhere requires the victim to authorize the filing of a petition for compensation on his behalf "in writing". The words "in writing", therefore, in my view, cannot be read into the section, more so, when they would defeat the object of the Act itself, and result in non-conferment of benefit on the victims of road accidents to which they would otherwise be entitled. The Petitioner, in any case, had waived his right to challenge the impugned order by virtue of the fact that prior to the filing of the present petition he had not filed written statement to the amended petition and even cross-examined the Respondent No. 1 without demur or protest. The present petition is, therefore, not maintainable and is liable to be dismissed.

17. The petition is accordingly dismissed with the observation that in case the Respondent No. 1 succeeds in his claim petition, and in the event the Insurance Company is saddled with the liability for payment of compensation, the Petitioner may be burdened with the liability to pay interest for the period the present petition remained pending in this Court.