M/s. Concord of India Insurance Co. Ltd.

Vs

Smt. Nirmala Devi and Others

Special Leave Petitions (Civil) Nos. 5228 and 5286 of 1977

(V. R. Krishna Iyer, R. S. Pathak JJ)

16.04.1979

JUDGMENT

1. An explosive escalation of automobile accidents, accounting for more deaths than the most deadly diseases, has become a lethal phenomenon on Indian Roads everywhere. The jural impact of this tragic development on our legislatures, courts and law enforcing agencies is insufficient, with the result that the poor, who are, by and large, the casualty in most of these cases, suffer loss of life or limb and are deprived of expeditions legal remedies in the shape of reasonably quantified compensation promptly paid - and this, even after compulsory motor insurance and nationalisation of insurance business. The facts of these special leave petitions which we dismiss by this order, raise two serious issues which constrain us to make a speaking order. The first deals with legal rights, literacy in the case of automobile accidents and the processual modalities which secure redressal of grievances. The second relates to the consequences of negligence of counsel which misleads a litigant into delayed pursuit of his remedy.

2. Medieval roads with treacherous dangers and total disrepair, explosive increase of heavy vehicles often terribly overloaded and without cautionary signals, reckless drivers crazy with speed and tipsy with spirituous potions, non-enforcement of traffic regulations designed for safety but offering opportunities for systematised corruption and little else and, as a cumulative effect, mounting highway accidents demand a new dimension to the law of torts through no fault liability and processual celerity and simplicity in compensation claims cases. Social justice, the command of the Constitution is being violated by the State itself by neglecting road repairs, ignoring deadly over-loads and contesting liability after nationalising the bulk of bus transport and the whole of general insurance business. The jurisprudence of compensation for motor accidents must develop in the direction of no-fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales. In the present case, a doctor and his brother riding a motor cycle were hit by a jeep driver and both were killed. The fatal event occurred in November, 1971, but the Motor Accident Claims Tribunal delivered judgment five years later awarding sums of Rs. 80,000 and Rs. 73,500 to the two sets of claimants.

3. The delay of five years in such cases is a terrible commentary on the judicial process. If only no-fault liability, automatic reporting by the police who investigate the accident in a statutory pro-forma signed by the claimants and forwarded to the tribunal as in Tamil Nadu and decentralised empowerment of such tribunals in every district coupled with informal procedures and liberation from court fees and the sophisticated rules of evidence and burden of proof were introduced - easy and inexpensive if the State has the will to help the poor who mostly die in such accidents - law's delays in this compassionate jurisdiction can be banished. Social justice in action is the measure of the State's constitutional sensitivity. Anyway, we have made these observations hopefully to help

focus the attention of the Union and the States.

4. The nationalised insurance company appealed to the High Court against the award. We have no doubt that the finding on both the culpability and the quantum as rendered by the trial Court are correct. But the High Court dismissed the appeal on the ground of delay, dismissing the application of the petitioner for condonation under Section 5 of the Limitation Act.

5. The Accident Claims Tribunal pronounced its award on September 15, 1976, after making the necessary computations and deductions. The appeal had to be filed on or before January 19, 1977 but was actually filed 30 days later. Counsel for the petitioner is stated to have made the mistake in the calculation of the period of limitation. He had intimated the parties accordingly with the result that the petitioner was misled into instituting the appeal late. The High Court took the view that the lawyer's ignorance about the law was no ground for condonation of delay. Reliance was placed on some decisions of the Punjab High Court and there was reference also to a ruling of the Supreme Court in State of W. B. v. Administrator, Howrah Municipality ((1972) 1 SCC 366 : (1972) 2 SCR 874 : AIR 1972 SC 749). The conclusion was couched in these words :

> The Assistant Divisional Manager of the Company-appellant is not an illiterate or so ignorant person who could not calculate the period of limitation. Such like appeals are filed by such companies daily. The facts of this case clearly show, as observed earlier, that the mistake is not bona fide and the appellant has failed to show sufficient cause to condone the delay.

6. We are not able to agree with this reasoning. A company relies on its Legal Adviser and the Manager's expertise is in company management and not in law. There is no particular reason why when a company or other person retains a lawyer to advise it or him on legal affairs reliance should not be placed on such counsel. Of course, if there is gross delay too patent even for laymen or if there is incomprehensible indifference the shield of legal opinion may still be vulnerable. The correct legal position has been explained with reference to the Supreme Court decision in a judgment of one of us in State of Kerala v. K. K. M. Kurup (AIR 1971 Ker 211, 215).

> "The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have been quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit on a wrong reading of the situation." (Lal Mata Din v. A. Narayanan, (1969) 2 SCC 770, 772)
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> The High Court took the view that Mr. Raizada being an advocate of 34 years' standing could not possibly make the mistake in view of the clear provisions on the subject of appeals existing under Section 39(1) of the Punjab Courts Act and therefore, his advice to file the appeal before the District Court would not come to the rescue of the appellant under Section 5 of the Limitation Act. The Supreme Court upset this approach.

I am of the view that legal advice given by the members of the legal profession may sometimes be wrong even as pronouncement on question of law by courts are sometimes wrong. An amount of latitude is expected in such cases for, to err is human did laymen, as litigants are, may legitimately

lean on expert counsel in legal as in other departments, without probing the professional competence of the advice. The court must of course, see whether, in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause when an application under Section 5 of the Limitation Act is being considered. The State has not acted improperly in relying on its legal advisers.

7. We have clarified the legal position regarding the propriety and reasonableness of companies and other persons relying upon legal opinion in the matter of computation of limitation since it is a problem which may arise frequently. If Legal Adviser's opinions are to be subjected by company managers to further legal scrutiny of their own, and impossible situation may arise. Indeed Government, a large litigant in this country, may find itself in difficulty. That is the reason why we have chosen to explain at this length the application of Section 5 vis-a-vis counsel's mistake.

8. This does not automatically secure a visa for the petitioner into the Court under Article 136. There must be manifest injustice or gross misappreciation or perversity in factual findings. We have examined the merits of the matter to the extent available on the record and have heard counsel for the petitioner. He has hardly convinced us that the merits of the case call for any intervention at all. In this view we are constrained to dismiss the special Leave Petitions now that we have expressed ourselves on both the points dealt with above.

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