

Wadhya Mal

Vs

Prem Chand Jain and Another

Civil Appeal No. 1410 of 1981

(D.A. Desai, Baharul Islam JJ)

14.04.1981

JUDGMENT

DESAI, J. –

1. Special leave to appeal granted.

2. We heard learned counsel Mr. O.P. Verma for the appellant, learned counsel Mr. J.P. Goyal for respondent 1 and learned counsel J.L. Nain for respondent 2. The only point involved in this appeal at this stage is that the present appellant who had preferred an appeal against an award made by Motor Accidents Claims Tribunal was dismissed by the High Court on the short ground that it was barred by limitation, after rejecting the application for condoning the delay in preferring the appeal.

3. The award was made by Second Additional Motor Accidents Claims Tribunal, Meerut on March 31, 1977. Appellant was the owner of the truck involved in the accident in which respondent 1 was injured. Respondent 1 preferred First Appeal 266 of 1977 against the aforementioned award. Respondent 2 - insurer, preferred First Appeal 248 of 1977 against the same award. We are informed that both these appeals are pending in the High Court.

4. The present appellant preferred an appeal against the same award. The appeal of the present appellant has been dismissed on the ground that it is barred by limitation. This conclusion was recorded after the application of the appellant for condoning delay was rejected.

5. In view of the fact that the award dated March 31, 1977 is under challenge in two appeals, it is just and proper that the appeal of the present appellant may also be entertained and may be disposed of on merits along with aforementioned two appeals. May be, there was some delay in preferring the appeal by the present appellant, but if one goes through the zigzag course of the proceedings, it would appear that there was at least some justification for the appellant being misled as to when he should have preferred his appeal. To briefly trace the course of this proceeding, it may be pointed out that the claimants filed an appeal of which notice was served on the appellant on November 12, 1977. There was some ex parte proceedings and the application was made to set aside the same. By an application dated March 4, 1978, a prayer was made for setting aside the ex parte award. This application appears to have been rejected, and an appeal against the order was held not to be maintainable. Thereafter the appellant filed an appeal against the award which was obviously time barred and his application for condoning delay was rejected on the ground that his moving from pillar to post would not be a sufficient ground for condoning the delay. We need not take a very strict view of the matter and we consider it appropriate to give an opportunity to the appellant to get his appeal adjudicated on merits on the only ground that the award which he seeks to challenge is

under appeal by respondent 1 and respondent 2. Guided by these special facts of the case, we allow this appeal, set aside the order of the High Court rejecting the appeal of the appellant on the ground that it was barred by limitation. We condone the delay in preferring the appeal and direct that the appeal be admitted to file and heard and disposed of along with appeals preferred by respondent 1 and respondent 2 pending in the High Court. Appeal allowed to that extent with no order as to costs.

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