

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 255 OF 2020

Suman Bagari,
Son of Devaiah Bagari,
23 years old,
R/o 20-316 Goutham Nagar,
Malkajgiri, Hyderabad,
Ranga Reddy.

.... Petitioner

V e r s u s

1. Akash Choudhary,
Son of Anil Choudhary,
Age 27 years old, Business
Presently residing at Flat no.602,
Rivera Palms, Arpora Bardez Goa
Permanent Resident of
1641 Sec 7 U.E.
Karnal, Harayana.

2. Kuber Gupta,
Son of Jaganath Gupta,
Age, 45 years,
R/o H. no.4/256,
Near Vengurlekar House,
Porba Waddo, Calangute
Bardez Goa.

3. Bajaj Allianz General Insurance Company
Ltd.,
Through its Manager,
having registered office at G.E. Plaza,
Airport Road, Yarwada, Pune,
Maharashtra 411006.

.... Respondents.

Adv. Swar Ashish Saidas for the Petitioner
Adv. Kewal T. Sawant for Respondent no.1

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 18 September 2020 .

Order:

The petitioner is said to be a driver, and he is the first respondent in Claims Petition No.79/2018 before the Motor Accidents Claims Tribunal at Mapusa. The second respondent is the owner, and the third respondent the Insurance Company. The first respondent filed the claim petition on the grounds that his wife died in an accident and that he should be compensated.

2. The petitioner, as the first respondent, living in Hyderabad, received the summons or notice on 20 December 2018, with the first date of hearing fixed on 23 January 2019.

3. On 23 January 2019, instructed by the petitioner, one counsel came from Bombay to Hyderabad and offered to file *vakalatnama* before the Tribunal. But he did not. The petitioner, on that count, tells the Court that he being a driver could not afford that counsel from Hyderabad. Later, he got another counsel from Goa appointed, and that counsel entered an appearance on 17 August 2019. After that, the petitioner applied for filing the written statement.

4. Then, the petitioner reckoned that under Order 8 Rule 1 of the Code of Civil Procedure, there was a delay. Therefore, he applied to the Tribunal for the delay condonation. Eventually, on the merits, the Tribunal refused to condone the delay. On 12 February 2020, it

dismissed the application. Aggrieved, the petitioner has come before this Court.

5. The petitioner's counsel submits that the petitioner is not from this place and does not have the means to defend himself before the Tribunal. In that context, he underlines that to find an affordable counsel in Goa, the petitioner, indeed, has taken some time. At any rate, the learned counsel points out that Order 8 of CPC does not apply to the proceedings before a Motor Accidents Tribunal. But uninitiated into legal nuances, the petitioner *bona fide* believed that Order VIII would apply.

6. Under these circumstances, the petitioner applied to the Tribunal, the learned counsel explains, for having a delay of 273 days condoned in his filing the written statement. According to him, the Tribunal dismissed the application without assigning proper reasons. Nevertheless, the learned counsel insists that once Order VIII of the CPC stands excluded, the question of delay does not arise, the petitioner's applying for delay condonation notwithstanding. To support his contention, the learned counsel has relied on *New India Company Ltd. v. Smt. Basawa*, AIR 2004 Karnataka 455.

7. On the other hand, the learned counsel for the respondent no.1 has strenuously contended that the petitioner himself invoked Order VIII, Rule 1 of CPC. Therefore, he cannot now turn back and

contend that Order VIII does not apply. At any rate, he contends that the petitioner has no justifiable reasons for having the delay condoned. In this context, the respondent's counsel asserts that the petitioner entered appearance through his counsel on 23 January 2019. So that date must be taken as the date for reckoning the delay. Therefore, he has urged this Court to dismiss the writ petition.

8. Heard Shri Saidas, the learned counsel for the petitioner, and Shri Sawant, the learned counsel for the respondent.

9. The facts are not disputed, save whether the petitioner had a representation before the Tribunal on 23 January 2019. In fact, he fairly agrees that he was represented by a counsel from Hyderabad to enter an appearance on his behalf. In fact, that counsel came over to Goa on that day from Hyderabad. He offered to file vakalatnama but did not do so. Therefore, we cannot say that there was any proper representation on record for the petitioner. Later, indeed, he had proper representation from 17 August 2019 onwards. Meanwhile, the petitioner had not been set *ex parte*. So the whole issue hinges on whether Order VIII of CPC applies to the proceedings before a Motor Accidents Tribunal. If it applies, as the petitioner intended to file the written statement beyond the statutory period, he should explain the delay. If the provision does not apply, the petitioner's actually filing the delay condonation

petition is of no consequence. According to the petitioner, the High Court of Karnataka has clarified the position in this regard.

10. Let us examine the Karnataka High Court's decision in *Basarwa*. In that case, the insurance company filed the written statement beyond 90 days. So, the Tribunal rejected that on the grounds of delay.

11. When the matter reached the Karnataka High Court, it has considered two Rules of the Karnataka Motor Vehicle Rules, 1989: Rules 253 and 254. After analyzing these Rules, the Court, per K. L. Manjunath J, has held that a few provisions of CPC would apply to the proceedings before the Claims Tribunal. And those provisions already stand enumerated. And from them, Rule 1 of Order VIII is absent. In fact, only Rules 2 to 5 of Order VIII made applicable. So *Basarwa* has concluded that Rule 1 or Rule 1A of Order VIII, besides Rules 6 to 8, of the same Order does not apply to the proceedings before a Motor Accidents Claims Tribunal.

12. If we peruse the MV Act Rules as applied in Goa. Rule 300 of the Goa Motor Vehicles Rules corresponds to Rule 254 of the Karnataka Motor Vehicles Rules. It reads

300. Procedure to be followed by Claims Tribunal in holding enquiries. (1) The following provisions of the Code of Civil Procedure 1908 shall, so far as may be, applied to the proceedings before every Claims Tribunal viz.

(a) Sections 28, 79 and 82;

(b) Order V, rule 9 to 13 (both inclusive) and 15 to 30 (both inclusive); Order VI, rules 4, 5, 7, 10, 11, 16, 17, and 18 and Order VII, rule 10; *Order VIII, rules 2 to 5 (both inclusive)*;

Orders IX and X, Order XI, rules 12 to 15 (both inclusive), rules 17 to 21 (both inclusive) and rule 23; Order XII, rules 1, 2, 3A, 4, 7, and 9; Order XIII, rules 3 to 10 (both inclusive); Order XIV, rules 2 and 5; Order XVI, Order XVII, Order XVIII, rules 1 to 4 (both inclusive); and rules 10 to 12 (both inclusive); and rules 15 to 18 (both inclusive); Order XX, rules 1 to 3 (both inclusive), rules 8, 11 and 20; Order XXI, Order XXII, rules 1 to 7 (both inclusive) and rule 9; Order XXIII, rules 1 to 3 (both inclusive); Order XIV, Order XXVI, rules 1 to 8 (both inclusive) and rules 15 to 18 (both inclusive); Order XXVII; Order XXVIII; Order XXIX, Order XXX, rules 1, 3 to 8 (both inclusive) and rule 10; Order XXXII, rules 1 to 15 (both inclusive); Order XXXVII, rules 1 to 7 (both inclusive); and Order XXXIX, rules 1 to 5 (both inclusive). In so far as the Act and these rules make no provision, or make insufficient provision the relevant provisions of the Code of Civil Procedure, 1908 shall so far as may be, apply to the proceedings before the Claims Tribunal.

(italics supplied)

13. Indeed, from the above provision, we can notice that to the Claims Tribunal only specific provisions of CPC apply, and they stand enumerated. For our purpose, we should consider Order VIII, which deals with "written statement, set-off, and counter-claim". Only the Rules 2 to 5 of Order VIII apply to the proceedings before the Claims Tribunal. And Rule 1 is conspicuously absent.

14. It needs no further elucidation that Rule 1 of Order VIII suffered an amendment in 2002. In its substituted form, the Rules requires the defendant to present a written statement of his defence in 30 days from the date he received the summons. The proviso to the Rule provides for a larger window of time. According to it, if the defendant fails to file the written statement in 30 days, "he shall be allowed to file the same on such other day, as may be specified by

the Court, for reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons”.

15. Once Rule 1 of Order VIII stands excluded from the enumerated provisions of CPC in Rule 300 of Goa Motor Vehicle Rules, 1991, the question of the respondent or the opponent in a claim petition filing the written statement belatedly does not arise. He may file his defence any time before he is set *ex parte*. Once a statutory provision does not cast an obligation on a party to the litigation to act in a particular way, but if he acts so, what should be the consequences? The result of that mistaken act ought not to affect him. There can be no estoppel, either.

16. To contextualize the above proposition, we may note that here the petitioner as the opposite party in the claim proceedings could have filed his defence or written statement without any time constraint — before he was set *ex parte*. In fact, he was not set *ex parte*. Instead, ignorantly he presumed that Rule 1 of Order VIII of CPC imposes a time limit on his filing the statement. So he applied to the Tribunal to have that assumed delay condoned. There is, in the first place, no delay; in the second, nor has the Tribunal the power to condone or refused to condone that nonexistent delay. Thus, the whole exercise initiated by the petitioner and concluded by the Tribunal is an exercise in futility. No legal consequences flow from it—*non sequitur*.

Under these circumstances, I allow the writ petition. As a result, the impugned Order stands set aside. Consequently, the Tribunal will accept the written statement if filed by the petitioner.

DAMA SESHADRI NAIDU, J.

ap/-