APPELLATE CIVIL

Before Gurdev Singh and H. R. Khanna, JJ.

NEW INDIA ASSURANCE CO. LTD., AND ANOTHER,—*Appellants.*

versus

PUNJAB ROADWAYS, AND OTHERS,—*Respondents.*

F.A.O. 103 of 1961 and C. Misc. No. 3255 of 1961.

1962

Dec., 17th.

Motor Vehicles Act (IV of 1939)—S. 110—A—"Duly authorized agent"—Meaning of—S. 110-C—Rules of procedure laid down in the Code of Civil Procedure (Act V of 1908)—Whether can be followed by the Claims Tribunal although not specifically mentioned—S. 110-A, (3) proviso—"Sufficient cause"—Meaning of—Lower Court condoning delay—Appellate Court—When justified to interfere.

Held, that the expression "duly authorised agent" contained in clause (c) of sub-section 110-A of the Motor Vehicles Act, 1939, does not mean a person expressly authorized, or that the authority should be in writing, but includes a person having implied authority to claim compensation for the one who is injured in the accident. If this phrase is interpretted too mean an agent expressly authorized by a document in writing, the persons like minors, idiots and lunatics, or those permanently disabled and mentally affected would be deprived of the right to claim compensation for the injuries suffered by them in a motor accident, however grave and serious the injuries may be. Likewise the persons who become disabled as a result of the accident would have no remedy to claim compensation for injuries suffered in the accident, and this could never have been the intention of the Legislature while enacting this provision

especially when the jurisdiction of the Civil Courts to entertain any suit for compensation for the injuries in a motor accident has been expressly taken away by Section 110-F of the said Act.

Held, that it is true that the various provisions contained in the Motor Vehicles Act and the Rules framed thereunder do not apply the Code of Civil Procedure as a whole, or the provisions of Order 1 rule 10 of the Civil Procedure Code specifically to the proceedings before the Tribunal, yet nothing in the Act or the Rules framed under the Act prohibits resort by the Tribunal to the principles embodied in various Rules relating to the conduct of proceedings before a Civil Court. In fact, the provisions like summoning of witnesses, enforcing their attendance and issuing of commission for examination of witnesses have been specifically made applicable to the proceedings before the Tribunal, not as exhaustive of its powers, but with a view to make the processes issued by the Tribunal regarding the matters referred to above enforceable as processes of a Civil Court. With regard to the rest of the matters, which relate to the procedure for dealing with claims application and the enquiry which the Tribunal is to conduct under section 110-C of the Indian Motor Vehicles Act, the legislature has vested a vast discretion in the Tribunal itself. This is quite apparent from the provisions of sub-section (4) of section 110-C. It specifically provides that in holding any inquiry under section 110-B on the claim application made before it, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. From this it follows that unless there is any prohibition in the rules framed under the Act, the Tribunal is free to follow any procedure which it considers expedient in the interests of justice. The section expressly confers powers on the Tribunal to formulate its own pocedure, and for the purpose of promoting the ends of justice it could well resort to all the principles of an orderly trial and for that purpose exercise the powers of allowing amendments or substituution so as to ractify a mistake or to bring on record parties which were necessary or proper. Although Order 1, Rule 10 of the Code of Civil Procedure does not in terms apply, there is no prohibition in resorting to the principles contained therein, the technicalities of that rule are not to be taken note of by the Tribunal,

and it is only the spirit that has to be applied with the object of securing the ends of justice.

Held, that the words "sufficient cause" in the proviso to sub-section (3) of section 110-A of the Motor Vehicles Act, should receive a liberal construction so as to advance substantial justice where no serious negligence or inaction or want of *bona fides* is imputed to the claimant. Generally the discretion exercised by a subordinate Court in extending the period of limitation, finding that sufficient cause had been made out, is not to be intefrered with unless it can be said that in exercising its discretion the Court had acted unreasonably or capriciously or had ignored relevant facts and adopted an unjudicial approach.

Case referred by the Hon'ble Mr. Justice Gurdes Singh, on the 19th March, 1962 to a larger Bench for decision owing to the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Gurdev Singh and the Hon'ble Mr. Justice H.. R. Khanna, on 17th December, 1962.

First Appeal from the order of Shri G. S. Gyani, Motor Accidents Claims Tribunal, Punjab, Chandigarh dated the 9th February, 1961 ordering that the total amount of compensation amounting to Rs. 7,200 with costs in addition to Rs. 1,832.85 nP. on account of medical expenses already allowed totalling to Rs. 9,032.85 nP. is to be paid to the applicant Shrimati Lajwanti and further ordering that this amount is to paid by respondent Punjab State and Samana Bus Service on 50.50 basis and also ordering that the amount falling to the share of Samana Bus Service is to be paid by the New India Assurance Co. Ltd., alongwith half of the costs of the case.

A. M. SURI AND S. M. SURI, ADVOCATES, for the Appellants.

L. D. KAUSHAL, DEPUTY ADVOCATE GENERAL, J. K. SIBAL, K. C. NAYAR AND C. M. NAYAR, ADVOCATES, for the Respondents.

JUDGEMENT.

The judgement of the Court was delivered by—

Gurdev Singh, J.

GURDEV SINGH, J.—On an application under section 110-A of the Motor Vehicles Act, 4 of 1939, the Motor Accidents Claims Tribunal, Punjab, by its order, dated 9th February, 1961, awarded to Shrimati Lajwanti, Rs. 9,032.85 nP., to be paid in equal shares by the Punjab State, owner of the Punjab Raodways, and the Samana Bus Service, as compensation for bodily injuries suff ered by her in a motor accident. Against this order both the parties, against whom the award has been made, have appealed to this Court under section 110-D of the Motor Vehicles Act 1939, challenging the validity and correctness of the award, while the claimant Shrimati Lajwanti has put in cross-obections (C.M. 3255 of 1961), praying that the compensation awarded to her for bodily injuries etc., be enhanced to Rs. 10,000. Both these appeals (First appeal from Order Nos. 103 and 110 of 1961) and the cross-objections will be disposed of by this order. The material facts, in brief, are as follows:—

On the morning of 16th November, 1959, the respondent Shrimati Lajwanti boarded at Ambala Cantonment the Punjab Roadways Bus No. PNE, 8318 bound for Chandigarh. As the bus come to a crossing on the G.T. Road near Ambala City, it collided with bus No. PNT. 1080, owned by the appellant, the Samana Bus Service. Shrimati Lajwanti sustained grevious injuries including fracture of her skull, and became unconcious. She was promptly removed to the Mission Hospital, Ambala City, and after first aid had been rendered to her, she was taken to the local civil hospital and was admitted there as an indoor patient. She lay there unconscious for a number of days and was discharged only on 3rd January, 1960, though not yet cured.

On 27th November, 1959, while she was still lying unconscious in the hospital, her husband Dev Raj, being under the erroneous impression that claim for compensation had to be lodged within 15 days of the accident, presented to the Motor Accidents Claims Tribunal, Punjab, an application under section 110-A of the Motor Vehicles Act, 4 of 1939, claiming Rs. 10,000 as compensation for injuries suffered by his wife in this accident. It was specially stated therein that Shrimati Lajwanti, who had become unconscious as a result of the accident, was still lying unconscious in the hospital.

Originally the Punjab Roadways, Ambala, alone was made a party to the proceedings, but subsequently, on 28th December, 1959, Dev Raj applied for impleading the State of Punjab, being the owner of the Punjab Roadways, the Samana Bus Syndicate, to whom one of the vehicles involved in the accident belonged, and Mehar Singh, the driver of their vehicle as respondents. In that application, besides stating that Shrimati Lajwanti was still lying unconscious in the hospital, Dev Raj stated as follows:—

> "As the time limit for making the application under the law was 15 days and I had to come from Lucknow, I, therefore, as representative of my wife made the application in hurry and could not get the correct particulars for drafting the application ".

It was not disputed by the State of Punjab and the Punjab Roadways that Shrimati Lajwanti sustained injuries while travelling in their bus, but they denied their liability on the plea that the accident occured due to the rash and negligent driving by the driver of the Samana Bus Syndicate, who did not even hold a valid licence.

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The Samana Bus Syandicate and its driver Mehar Singh (respondents 3 and 4), besides pleading that they were in no way responsible for the accident, objected that the claim application was not entertainable as it had not been made by Shrimati Lajwanti, who was still alive, but by a third person. It was also complained that the amount claimed was highly exaggerated.

The trial of the petition proceeded on the following issues framed on 26th February, 1960:—

(1) Whether the accident is due to rash and negligent act of the driver of PNE. 8318, owned by the Punjab Roadways, Ambala, or by the driver of PNT, 1080, owned by the Smana Bus Service?

(2) What is the quantum of compensation due to the applicant, if any, and from whom?

While striking these issues, the Tribunal recorded a note that no other issue was claimed by the parties. The evidence in the case concluded on 5th October, 1960. The arguments in the case commenced on 19th October, 1960. Though no specific issue had been framed about the *locus standi* of Dev Raj to make the application for compensation, nor such a plea taken in the written statement of the Punjab State and Punjab Roadways, in the course of arguments an objection was raised by the respondents that since Shrimati Lajwanti, who had sustained injuries, was alive, she alone could make the application for compensation, and the application made by Dev Raj was incompetent. To meet this objection, both Dev Raj applicant and his wife Shrimati Lajwanti put in separate applications under Order 1 rule 10 of the Civil Procedure Code for substituting Shrimati Lajwanti in place of Dev Raj applicant on

the plea that the claim application was made for and on behalf of Shrimati Lajwanti, and it was due to a *bona fide* mistake that the name of her husband was entered as applicant. These applications were allowed by the Tribunal,—*vide* its order, dated 2nd Decemeber, 1960,and acting under the proviso to subsection (3) of section 110-A of the Motor Vehicles Act, the learned Tribunal extended the time and treated the application as within time. The Tribunal gave its award on 9th February, 1961. Findinng issue No. 1 in favour of the applicant, the Tribunal assessed the compensation at Rs. 9,032.85 nP., payable to her in equal shares by the State of Punjab and the Samana Bus Syandicate. The cost of the proceedings assessed at Rs. 150 were also directed to be paid by them. Aggreived by this award, the Samana Bus Syandicate as well as the Punjab State, owners of the Punjab Roadways, have preferred separate appeals (F.A.O. Nos. 103 and 110 of 1961), while Shrimati Lajwanti has put in cross-objections praying that the amuont awarded by the Tribunal be enhanced by Rs. 967.15 nP.

Besides assailing the order of the Tribunal on merits and contending that no case for award of compensation had ben made out and the amount awarded was excessive, counsel for the appellants in both the appeals have contended that the entire proceedings taken by the Tribunal were without jurisdiction as the original application, dated 27th November, 1959, on which the proceedingns commenced, was not made by Shrimati Lajwanti, who was injured in the accident but by her husband Dev Raj, who was neither entitled to claim compensation nor had any *locus standi* to apply for it. In this connection, reliance is placed upon the provisions of section 110-A of the Motor Vehicles Act, which runs as follows:—

> "110A. (1) An application for compensation arising out of an accident of the nature

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specified in sub-section (1) of section 110 may be made—

(a) by the person who has sustained the injury; or

(b) where death has resulted from the accident by the legal representatives of the deceased; or

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

(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

(3) No application for compensation under this section shall be entertained unless it is made within sixty days of occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

The application for compensation was made on 27th November, 1959, by Shrimati Lajwanti's husband Dev Raj in his own name. It was stated in this application that compensation was being claimed for injuries suffered by Shrimati Lajwanti in the motor accident which took place on 16th November, 1959. It was further stated in the application that Shrimati Lajwanti was still lying as an

indoor-patient in the civil hospital, Ambala City, had not regained consciousness, and that among the injuries suffered by her was fracture of the skull. The application did not purport to be on behalf of Shrimati Lajwanti nor was it stated therein that Dev Raj was acting as authorized agent of his wife.

The appellants' learned counsel has argued that under section 110-A of the Motor Vehicles Act, 4 of 1939, an application for compensation arising out of an accident of the nature specified in suub-section (1) of section 110-A could be made only by the person injured or his duly authorized agent if the accident does not result in death of the injured person, and it is only in cases where the injured person dies that the application for compensation by his legal representatives or their authorized agent would lie.

In the instant case, originally the application for compensation was made by Dev Raj, the husband of the injured lady, Shrimati Lajwanti. Admittedly, he held no power-of-attorney or written authority from his wife at the time he lodged the application with the Motor Accident Claims Tribunal, and the application did not contain any averment that it had been made under the authority of Shrimati Lajwanti or on her behalf. It was headed as "Dev Raj v. Punjab Roadways." It is stated in that application that Shrimati Lajwanti was still lying unconscious as a result of injuries sustained by her in the accident and was confined as an indoor-patient in the civil hospital, Ambala City. It is thus obvious that on 27th November, 1959, when the claim application was made to the Tribunal, she was neither in a position to make an application herself nor was she capable of authorising any one orally or by written document to make a claim on her behalf.

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On a plain reading of section 110-A it is clear that where the person sustaining an injury in a motor accident does not die, then the application for compensation can be made only by the injured person himself or by an agent duly authorized by such a person. But there may be cases, and frequently there are, where the injured person may neither himself be able to make an application for compensation nor be in a position to authorize any one to apply on this behalf because of physical incapacity consequent upon the injuries sustained in the accident. If the expression "an agent duly authorized by him" occurring in clause (c) of sub-section (1) of section 110-A is narrowly construed as meaning a person who is expressly authorized in writing, the result would be that where the person involved in the accident loses consciousness or is unable to execute a document, no application or compensation can be made. If the physical incapacity caused by the accident is permanent, the result would be that neither the person injured nor any member of his family would be in a position to claim any compensation for the injury suffered, however grave the consequences may be, whereas a person who suffers only a minor injury would be able to claim compensation. Again, there may be other cases in which the person injured may not be in a position either to personally apply for compensation or to authorize any one to apply on his behalf. Among such cases would be those of infants who have neither attained sufficient maturity of understanding nor are liable to speak or express themselves. Then we have cases of deaf and dumb persons or lunatics and idiots who are not capable of conferring any authority on any one. In cases of such persons, if section 110-A of the Motor Vehicles Act is strictly construed, it will have to be held that no application for compensation can be made on their behalf, with

the result that there will be no liability of the guilty party, to compensate these persons for the bodily injuries suffered by them, however grave it may be. In fact, if the injury suffered is not of a permanent nature, it may be possible for the injured to apply for compensation provided the delay in making the application is condoned by the Tribunal, but where the injury is permanent resulting in physical or mental incapacity to make an application or to authorize any one to apply for compensation, the guilty party would go scot free. Such an interpretation would not only entail hardship but lead to startling results. Could the legislature have intended that persons like minors, idiots and lunatics, or those permanently disabled and mentally affected should be deprived of the right to claim compensation for the injuries suffered by them in a motor accident? In my opinion, the answer to this question must be in the negative. It will reduce the provisions relating to the award of compensation for injuries suffered in a motor accident to an absurdity, and one of the principles of Interpretation of Statutes is to avoid such a situation.

According to the law as it stands, the person injured in a motor accident has no other remedy, as by enacting section 110-F the legislature has taken away his ordinary right even to seek relief in a Civil Court. It is enacted in that section :—

> "110F. Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims

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Tribunal in respect of the claim for compensation shall be granted by the Civil Court."

From this it is obvious that the only course open to a person injuried in a motor accident for claiming compensation is by way of an application to the Claims Tribunal and not by a separate suit or application to a Civil Court or any other Tribunal. From this it follows that if an injuried person, because of physical or mental incapacity is unable to apply himself or duly authorize another person to make an application for compensation under section 110-A, he would not be able to recover any compensation, however, grave the injury suffered by him may be. Such an absurdity can be avoided only by holding that the expression "duly authorized agent" contained in clause (c) of sub-section (1) of section 110-A of the Motor Vehciles Act does not mean a person expressly authorized, or that the authority should be in writing, but includes a person having implied authority to claim compensation for the one who is injured in the accident. It is, however, not necessary to express a definite opinion on this point as we find that subsequently the defect was remedied by substituting the name of Shrimati Lajwanti for the original applicant with the leave of the Tribunal.

Even if on the literal construction of section 110-A it is held that Dev Raj had no *locus standi* to make the application for compensation in respect of the injuries suffered by his wife, Shrimati Lajwanti, and the application should have been made by Lajwanti herself, it is contended on behalf of the respondent Lajwanti that the defect stood cured by the order of the Tribunal, dated 2nd December, 1960, passed under Order 1 rule 10 of the Civil Procedure Code, by which the mistake was allowed to be rectified and the name

of Shrimati Lajwanti was substituted for the wrong applicant Dev Raj. This order of substitution has, however, been vehemently assailed by the learned counsel for the appellants as without jurisdiction and unwarranted by law, and they have contended :—

(1) that the Tribunal had no jurisdiction to allow substitution of the name of Shrimati Lajwanti in place of her husband Dev Raj as the provisions of Order 1 rule 10 of the Civil Procedure Code did not apply to the proceedings,

(2) that even if the Tribunal had power to allow substitution, it should not have exercised that discretion in favour of the respondent as on the day the order was made the claim of Shrimati Lajwanti was barred by time as under sub-section (3) of section 110-A of the Motor Vehicles Act an application for compensation made after the expiry of 60 days of the occurrence of the accident could not be entertained, and

(3) that the Tribunal could not extend the time for making the claim as no sufficient cause for the delay in seeking substitution of the name of Shrimati Lajwanti in place of her husband Dev Raj had been made out.

In support of the first contention that the Tribunal had no power to allow substitution acting under Order 1 rule 10 of the Civil Procedure Code, reference is made to section 110-C of the Motor Vehicles Act, which lays down the procedure and powers of the Claims Tribunal, and it is pointed out that while in sub-section (2) of that section it is specifically stated that the Claims Tribunal shall have all the powers of

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a Civil Court for the purpose of taking evidence, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, and "for such other purposes as may be prescribed," neither the Code of Civil Procedure as a whole nor the provisions of Order 1 rule 10 of the Civil Procedure Code have been made applicable to such proceedings.

On reference to Chapter VIII in which section 110-C occurs, we find that the State Government is empowered to make rules for the purpose of carrying into effect the provisions of section 110-E "relating to the constitution of the Claims Tribunal and the proceedings before it." Under clauses (b) and (c) of that section, rules can be made by the State Government regarding the procedure to be followed by the Claims Tribunal in holding the enquiry under Chapter VIII and the powers vesting in a Civil Court which may be exercised by a Claims Tribunal. In exercise of these powers the Punjab Motor Vehicles Rules, 1940, had been framed, Rule 9.3 whereof relates to applications for compensation. Sub-rule (3) of Rule 9.3 provides :—

> "In the matter of fixing date for the hearing of parties and their witnesses, adjourning proceedings and dismissing applications in default or for other sufficient reasons, the Claims Tribunal shall so far as the nature of the case may require or permit, be guided generally by the principles for the time being observed by Civil Courts."

Rule 9.4 makes applicable to the proceedings before the Tribunal the provisions of sections 75, 76, 77 and

78 of the Code of Civil Procedure in respect of commissions. The appellants' learned counsel have argued that since Order 1 rule 10 of the Civil Procedure Code is not one of the provisions of the Code of Civil Procedure which has been made applicable to the proceedings before the Claims Tribunal, it follows that the application of that provision had been deliberately excluded by the legislature and the Tribunal is not competent to exercise the powers of allowing substitution under that provision of law. Reliance in this connection is placed upon *N. K. Segu Abdul Khadir Hadjiar* v. *A. K. Murthy* (1), where it was held that in the absence of incorporation of the provisions of Code of Civil Procedure in the rules of procedure for the tribunals under the Lease and Rent Control Act, there was no justification for the application of the principles of those provisions, as it would mean applying thase provisions when they were not made applicable. This authority has, however, not been followed by our Court, and in *Mathra Das* v. *Om Parkash and others* (2), Bhandari, C.J., held that even though the provisions of Order 22, Civil Procedure Code, were not specifically made applicable to proceedings before the Rent Controller, the Appellate Authority under the East Punjab Urban Rent Restriction Act was competent to implead the heirs and legal representatives of the landlord who had died after the passing of an order of eviction in his favour. In this connection, the learned Chief Justice observed:—

> "After a careful consideration of the several authorities which have been cited before me, I entertain no doubt in my mind that in the absence of a restraining provision a Rent Controller or a District Judge acting under the provisions of the Rent Restriction

(1) A.I.R. 1948 Mad. 235.
(2) I.L.R. 1957 Pun. 611—(1957) 59 P.L.R. 45.

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Act is at liberty to follow any procedure that he may choose to evolve for himself so long as the said procedure is orderly and consistent with the rules of natural justice and so long as it does not contravene the positive provisions of the law. The elementary and fundamental principles of a judicial enquiry should be observed but the more technical forms discarded."

His Lordship also laid down that a Court of law possessed inherent powers to act *ex debito justitiae,* to do that real and substantial justice for the administration of which it alone existed and to do all things that were reasonably necessary for securing the ends of justice within the scope of its jurisdiction, relying upon *D. N. Ray* v. *Nalin Behari Bose* (3) and *Hukamchand Baid* v. *Kamlanand Singh* (4).

It is true that the various provisions contained in the Act and the Rules framed thereunder do not apply the Code of Civil Procedure as a whole, and the provisions of Order 1 rule 10 of the Civil Procedure Code specifically to the proceedings before the Tribunal, yet nothing in the Act or the Rules framed under the Act prohibits resort by the Tribunal to the principles embodied in various Rules relating to the conduct of proceedings before a Civil Court. In fact, the provisions like summoning of witnesses, enforcing their attendance and issuing of commissions for examination of witnesses have been specifically made applicable to the proceedings before the Tribunal, not as exhaustive of its powers, but with a view to make the processes issued by the Tribunal regarding the matters referred to above enforceable as processes

(3) 46 I.C. 621.
(4) I.L.R. 33 Cal. 327

of a Civil Court. With regard to the rest of the matters, which relate to the procedure for dealing with claim application and the enquiry which the Tribunal is to conduct under section 110-C of the Indian Motor Vehicles Act, the legislature has vested a vast discretion in the Tribunal itself. This is quite apparent from the provisions of sub-section (4) of section 110-C. It specifically provides that in holding any inquiry under section 110-B on the claim application made before it, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. From this it follows that unless there is any prohibition in the rules framed under the Act, the Tribunal is free to follow any procedure which it considers expedient in the interests of justice. In similar situation, Bhandari C.J. observed in *Mathra Dass* v. *Om Parkash and others* (2) that in the absence of restraining provision a Tribunal is at liberty to follow any procedure that it may choose to evolve for itself so long as the said procedure is orderly and consistent with the rules of natural justice and does not contravene the positive provisions of the law. The section expressly confers powers on the Tribunal to formulate its own procedure, and for the purpose of promoting the ends of justice it could well resort to all the principles of an orderly trial and for that purpose exercise the powers of allowing amendments or substitution so as to rectify a mistake or to bring on record parties which were necessary or proper. In this view of the matter, the Tribunal acted quite properly in allowing substitution in accordance with the principles embodied in Order 1 rule 10 of the Civil Procedure Code. Since this rule did not in terms apply and there is no prohibition in resorting to the principles contained therein, the technicalities of that rule are not to be taken note of by the Tribunal, and it is only the spirit that has to be applied with the object of securing the ends of justice. Thus, I do not

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find anything wrong in the Tribunal allowing the substitution of the name of Shrimati Lajwanti for Dev Raj who had wrongly filed the application.

It was then submitted on behalf of the appellants that since it is provided under sub-section (3) of section 110-A of the Motor Vehicles Act that no application for compensation under this section shall be entertained unless it is made within 60 days of the occurrence of the accident, the Tribunal was not justified in allowing substitution after this period of limitation had expired, and, in any case, the claim of Shrimati Lajwanti should have been dismissed as barred by time. In this connection reliance was placed on *Krishnaji Shivaji Pawar* v. *Hanmaraddi Mallaraddi Maidur*(5), and *Govarjabai* v. *Ganpatsa Vithusa Teli* (6), besides sections 22 and 29 of the Indian limitation Act. It is true that on the day the applications for substitution were made the period of 60 days prescribed under subsection (3) of section 110-A of the Motor Vehicles Act had long expired, but the proviso to this very subsection confers power on the Claims Tribunal to entertain a claim application even after the expiry of this period if it is satisfied that the applicant was prevented for sufficient cause from making the application in time. It was in exercise of these powers that the learned Tribunal condoned the delay and entertained Shrimati Lajwanti's claim as within time.

This brings us to the consideration of the question whehter the Tribunal was justified in extending the period of limitation. It was submitted on behalf of the appellants that the expression "sufficient cause" as used in the proviso to sub-section (3) of section 110-A of the Motor Vehicles Act has to be interpreted in the

(5) A.I.R. 1934 Bom. 385.
(6) A.I.R. 1940 Nag. 274.

same sense in which it is used in section 5 of the Indian Limitation Act and no sufficient cause for extension of time was made out in the present case.

Even dealing with a case under section 5 of the Indian Limitation Act, this Court has taken the view that the words "sufficient cause" would receive a liberal construction so as to advance substantial justice where no serious negligence or inaction or want of *bona fides* is imputed to the claimant. Reference in this conection may be made to *Shakuntla Devi* v. *Kashmir Chand and others* (7) Generally the discretion exercised by a subordinate Court in extending the period of limitation, finding that sufficient cause had been made out, is not to be interfered with unless it can be said that in exercising its discretion the Court had acted unreasonably or capriciously or has ignored relevant facts and adopted an unjudicial approach. On a careful consideration of the various facts and circumstances brought on record, we find that it was an eminently fit case for extention of time, and the learned Tribunal quite properly exercised its powers under the proviso to sub-section (3) of section 110A.

The accident took place on 16th November, 1959. It rendered Shrimati Lajwanti unconscious at the spot, and she lay in that condition hovering between life and death for a long time. It is in the evidence of her husband Shri Dev Raj, A.W.2, that during those days he and his family were residing at Lucknow, and Shrimati Lajwanti had come to Punjab to attend a wedding. He was still at Lucknow when he received a telegram on 17th November, 1959, informing him of the accident resulting in grievous injuries to his wife. When he reached Ambala on 18th November, 1959, he found her lying unconscious. He further tells us that on 3rd January, 1960, he removed Shrimati Lajwanti in an unconscious condition on a stretcher and took her by train to her home in Lucknow.

(7) A.I.R. 1961 Punj. 184.

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His statement finds corroboration in the testimony of Dr. Surjan Singh, A.W. 4, Assistant Surgeon, in-charge Civil Hospital, Ambala. He deposed that Shrimati Lajwanti was admitted into the hospital in an unconscious condition, and on 3rd January, 1960, she had not fully regained consciousness. Describing her condition during the time she remained in the hospital, the doctor said: "She was violent and restless while in the hospital and her hands and feet had to be tied". On 27th May, 1960, when this doctor came into the witness-box, he again examined Shrimati Lajwanti, whose statement was also recorded by the Tribunal that day, and found that even on that day she was not in normal condition. His statement is consistent with the note recorded that day by the Tribunal regarding the demeanour of Shrimati Lajwanti, when she was in the witness-box. The certificate of the Civil Surgeon, Exhibit A.W. 2/1, also confirms that Shrimati Lajwanti was in semi-conscious condition when she was taken away from the hospital by her husband.

Thus we find that on 27th November, 1959, when Dev Raj put in the claim application with the Tribunal he was faced with the fact that his wife was lying unconscious in a dangerous condition. There was no immediate prospect of her recovery, and in fact it was doubtful if she would survive. He was under the impression that the application had to be made within 15 days of the accident and since his wife was not in a position to make it herself or to formally authorize any one to institute it on her behalf, he put in the claim. It was obviously on her behalf and for her benefit, and this fact was made clear by Dev Raj at the earliest opportunity when on 28th December, 1959, before any of the respondents had appeared, he made an application for impleading the Samana Bus Syndicate etc., as respondents. In that application,

the relevant portion of which has been reproduced earlier while giving the facts of the case, he specifically stated that he had made the application as representative of his wife who was still lying unconscious. A reference to her unconscious condition was again made in the replication filed by Dev Raj on 29th January, 1960.

Neither the Punjab Roadways nor the Punjab State took any objection to the *locus standi* of Dev Raj, and though such an objection was taken by the Samana Bus Syndicate in its written statement, dated 29th January, 1960, the objection does not appear to have been pressed as not only no issue was struck on that point but it was also specifically stated before the Tribunal (as noted by it in its proceedings, dated 26th February, 1960) that no other issue was claimed. It is significant that at no subsequent time any application was made to the Tribunal for adding an issue regarding the *locus standi* or the form of application, and the proceedings were allowed to go on without any objection. It was only in the course of arguments that the objection was taken on behalf of the respondents, even though such an objection had never been put forward either by the State of Punjab or the Punjab Roadways. It was at that stage that Shrimati Lajwanti and her husband Dev Raj made the applition under Order 1 rule 10 of the Civil Procedure Code. Since the matter had not been put in issue and none was claimed by the respondents, Shrimati Lajwanti and her husband were justifiably under the impression that the objection to the competency of the claim application had been withdrawn and the assertion of Dev Raj that he had made the application on behalf of his wife had been accepted by the respondents. If the objection had been pressed at the time issues were framed, an effort would have been made to rectify the mistake. It is proved on the record that

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even towards the end of May, 1960, when Shrimati Lajwanti came into the witness-box, she was still not in possession of her normal senses and could have jutifiably claimed extension of time for making a fresh application in her own name. Thus we find that the delay in making an application for substitution was due partly to physical and mental incapacity of Shrimati Lajwanti and partly because of the conduct of the respondents. In view of the circumstances examined above, there can be hardly any doubt that sufficient cause for the exercise of discretion vesting in the Tribunal to extend time had been made out, and the Tribunal quite properly treated the claim of Shrimati Lajwanti as within time.

Coming to the merits of the case, we find that there is no dispute that on the fateful day of 16th November, 1959, Shrimati Lajwanti was travelling in the Punab Roadways bus No. PNE. 8318 owned by the Punjab State, and injuries in respect of which compensation is claimed were sustained by her when that bus collided with bus No. PNT. 1080 of the Samana Bus Syndicate. It was also not disputed before us that the accident was the result of rash and negligent driving, though each of the two appellants, whose buses were involved in the accident, lay the blame at the other's door. The learned Tribunal has found that the drivers of both the buses were rash or negligent. This finding is fully justified by the evidence, and learned counsel for neither of the appellants has been able to point out anything to justify interference with it. Besides Shrimati Lajwanti, A.W.3, who was involved in the accident, Shri Gian Chand Sharma, C.W.1, retired Sub-Divisional Officer, Jagir Singh, R.W.1, Kashmira Singh, R.W.2, Mehar Singh, R.W.3, Charanjit Singh Thapar, R.W.4, Krishan Kumar, R.W.5, Niranjan Singh, R.W.9,

and Harbhajan Singh, R.W. 10, gave an eye-witness account of the accident. Out of these Mehar Singh, R.W. 3, is the driver of bus No. PNT. 1080 owned by the Samana Bus Syndicate, while Niranjan Singh, R.W.9, and Harbhajan Singh, R.W.10, are the driver and conductor, respectively, of the Punjab Roadways bus No. PNE. 8318 that was involved in the accident. The learned Tribunal did not attach much value to the testimony of these witnesses, as they were obviously interested in saving their own skins.

Admittedly, the incident took place at the T-juncion of the road joining Ambala City with the G. T. Road. The Punjab Roadways bus (No. PNE. 8318) in which Shrimati Lajwanti was a passenger came from the Ambala City side and had to take a turning when bus No. PNT. 1080 of the Samana Bus Syndicate came from the opposite direction and struck against the rear right portion of the Punjab Roadways bus with such force as to tear away its emergency door. The front portion of the bus of the Samana Bus Syndicate was also damaged. Mehar Singh R.W.3, driver of bus No. PNT. 1080, stated that he was not at fault, and the accident took place because the Punjab Roadways' bus was coming at an excessive speed and its driver had taken a narrow turning. He further stated that some military vehicles were also on the road, and though he attempted to avoid the accident, he could not swerve to the left for fear of falling in a ditch.

The driver of the Punjab Roadways bus No. PNE. 8318 deposed that as he took the turning and after entering the G.T. road was in process of straightening his vehicle, the bus of the Samana Bus Syndicate came from the opposite direction at a fast speed and struck against the rear of his bus. He claimed that his speed was hardly 10 or 12 miles per hour

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when he was negotiating the turning, while the speed of the other bus was 40 or 45 miles and the driver of that bus did not sound the horn. Shrimati Lajwanti, A.W.3, however, asserted that the Punjab Roadways bus in which she was travelling was proceeding at a fast speed, and while taking a turn the driver neither slowed down nor blew the horn. The learned Tribunal has held that the accident took place on account of the rash and negligent driving of both the buses which were involved in the accident. On a consideration of the entire evidence, he came to the conclusion that bus No. PNT. 1080 of the Samana Bus Syndicate, which was proceeding on the G.T. Road, was being driven at a fast speed, and it struck against the Punjab Roadways (PNE. 8318) as it was in the process of straightening up after negotiating the turning. He further found that non-observance of the statutory rules 6 and 7 of the 10th Schedule of the Motor Vehicles Act, prescribing how the drivers of vehicles should conduct themselves on approaching a road-junction, had been disregarded by the drivers of both the vehicles. In this connection, he observed:—

> According to rule 6, the driver of motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon. Similarly, rule 7 enjoins that the driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his

right hand. It is laid down in *Dullabhji Sakhidas Sanghani* v. *The Great Indian Peninsula Railway Co.* (8), *and Sooniram Ramniranjandas* v. *N.V. Gopala Krishnan* (9) that the non-observance of the statutory regulations is itself a *prima facie* proof of negligent driving. In this case it is on the record that none of the drivers stopped before entering the crossing. It was not only a violation of the rules but a positive act of negligence. It is also in evidence that there is no obstruction on the right hand side-road from which the Government bus was approaching the G.T. Road. It is also in evidence that the subsidiary road is of low-level and there are fields of low-level, and thus if both the drivers had been careful and vigilant, they should have seen the approach of each other's buses and it cannot be believed that till the Government bus was on G. T. Road, the bus No. 1080 was not visible. The road was clear, and the assertion of the witnesses of Samana Bus Service respondent that military trucks were passing at that time is not proved at all. On the other hand, it is in evidence that the G.T. road was clear and there was no traffic. This is also in evidence that the bus No. 1080 was going in the centre of the road and had it been to its extreme left, the accident could have been avoided."

The findings recorded by the Tribunal about the negligence of both the drivers are fully borne out by the material on record. It is in the evidence of Shri

(8) I.L.R. 34 Bom. 427.
(9) A.I.R. 1937 Rang. 519.

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Gian Chand Sharma, C.W.1, Charnjit Singh, R.W.4, and Krishan Kumar, R.W.5, who were passengers in the Punjab Roadways bus that the other bus was coming at a fast speed and struck against it before the Punjab Roadways bus could fully negotiate the turning. There was no other traffic on the road and nothing to obstruct the view of any of the two drivers. The driver of the Samana Bus Syndicate did not slow down, and as admitted by Charanjit Singh, R.W.4, the driver of the Punjab Roadways bus, who was entering the main road, neither stopped nor blew the horn. The assertion of Shrimati Lajwanti that even the Punjab Roadways bus in which she was going was being driven at a fast speed appears to be correct. If this bus was going at a speed of 10 or 12 miles, as claimed by its driver Niranjan Singh, R.W.9, he could not have failed to stop his vehicle when admittedly he had noticed the other bus coming on the G.T. road and it was still about 90 yards away. In view of all these facts, we affirm the finding of the Tribunal that the drivers of both the buses were responsible for the accident and their owners liable for the damages.

The only question that remains to be considered is about the quantum of compensation. The Tribunal has awarded Rs. 9,032.85 nP. to Shrimati Lajwanti. Out of these, Rs. 1,832.85 nP. are on account of the medical treatment and cost of medicines, while the rest (Rs. 7,200) have been allowed to her as compensation for physical and mental injury consequent upon the injuries suffered by her in the motor accident, making her invalid for years to come and unable to discharge her domestic duties including the coaching of her children. Shrimati Lajwanti had claimed Rs. 3,700 on account of medical expenses. Out of these, her brother, Shri Mohan Lal, A.W.1, claimed to have spent Rs. 800 on medicines etc., during the

period that Shrimati Lajwanti remained as indoor-patient in the hospital at Ambala, while her husband Dev Raj stated that he had spent Rs. 2,900 on the illness of his wife. These expenses included cost of medicines, injections and fees of various doctors under whose treatment Shrimati Lajwanti was at Lucknow. Among the various doctors who attended upon his wife were Dr. J. N. Srivastava, Captain D. R. Nigam, and the Civil Surgeon, Lucknow, whose certificate he placed on record. He further deposed that since Shrimati Lajwanti had been lying unconscious for a long time and was still not normal he had to engage an Aya at Rs. 70 per mensem and was paying Rs. 30 per mensem to a maid-servant for cooking meals for the family and other domestic work. While the learned Tribunal accepted the statement of Shri Mohan Lal, A.W.1, an Assistant employed in the Civil Secretariat, about the expenses that he had himself incurred on the illness of Shrimati Lajwanti, he allowed only Rs. 1,000 out of Rs. 2,900 claimed by Shrimati Lajwanti's husband. Both the parties feel aggrieved by this decision. Whereas it is contended on behalf of the appellants that in the absence of receipts regarding the purchase of medicines and medical fees and other expenses, no amount should have been allowed, on behalf of the respondent Shrimati Lajwanti it is complained that the entire sum of Rs. 2,900 claimed by her husband should have been allowed. Considering the serious nature of the injuries suffered by Shrimati Lawanti, which according to the evidence of Dr. Surjan Singh, A.W.4, had seriously impaired her physical and mental condition from which she had not recovered even on the date of award, it can well be believed that Rs. 1,832.85 nP. awarded by the Tribunal must have been incurred on her medical treatment especially when she was under the treatment of eminent doctors at Lucknow and her mental faculties had been seriously impaired.

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It may be that her treatment had cost her husband much more, but in the absence of any clear indication that the amount awarded by the Tribunal is inadequate, we do not find it possible to enhance it.

It is beyond dispute that as a result of injuries suffered in the accident Shrimati Lajwanti had become permanently invalid and her physical and mental faculties have been seriously impaired. Signs to that effect were visible even several months after the accident as when Shrimati Lajwanti appeared on 27th May, 1960, the learned Tribunal noted that she had considerable difficulty in speaking or moving about, was morose and betrayed signs of strain. Dr. Surjan Singh, who examined her on that day as well, confirmed that she was not yet normal. He further opined that she would not be able to concentrate on minute work and it was not even possible for him to say that she would recover completely. He also stated that the head injury could cause loss of memory, and it was possible that Shrimati Lajwanti would all the time be lying in bed and unable to do anything. Her husband Dev Raj, A. W. 2, stated that prior to the accident, Shrimati Lajwanti, who is a Matriculate, besides engaging in domestic work, used to help him in his business, coach her children and engage in sewing and cooking, but after the accident she had been confined to bed necessitating the employment of an Aya for her and a maid-servant for cooking meals for the family and other domestic work. This evidence remains unrebutted, and it is obvious that Shrimati Lajwanti is not only unable to discharge her domestic duties but she also needs the services of an attendant till she regains her normal-self, of which there appears to be no prospect. In these circumstances, the award of Rs. 50 per mensem for a period of 12 years, the period for which according to the estimate of the Tribunal

Shrimati Lajwanti, who is 38 years of age, is expected to live, cannot be considered be unreasonable. We accordingly, see no reason for interfering with the amount of compensation awarded by the Tribunal.

In the result, both the appeals (F. A. O. Nos. 103 and 110 of 1961) and the cross-objections (C. M. 3255 of 1961) fail and we dismiss the same, affirming the Tribunal's award. Parties to bear their own costs of this Court.

B. R. T.

CIVIL MISCELLANEOUS

Before A. N. Grover and Inder Dev Dua, JJ.

KIDAR NATH,—*Petitioner.*

versus

THE PUNJAB GOVERNMENT AND ANOTHER,—*Respondents.*

Civil Writ No. 629 of 1961.

1963

July 18th.

High Court Establishment (Appointment and Conditions of Service) Rules, 1952—Rule 29—Punjab Civil Services Rules, Volume I, Part I—Rule 1.8—Powers under—Whether exercisable by the Chief Justice or Finance Department—Constitution of India (1950)—Article 229—Intention and scope of.

Held, that in regard to the persons serving in the staff of High Court, the powers which have been made exercisable by the Finance Department of the Punjab Government under rule 1.8 of the Punjab Civil Services Rules, Volume I, Part I, can be exercised by the Chief Justce alone or any person directed by him. In view of Article 229 of the Constitution which vests complete control in the Chief Justice over the persons serving on the staff of the High Court and the express provisions of rule 29 of the High Court Establishment Rules, 1952, there can possibly be no doubt that the