

(2017) 04 GAU CK 0012
In the Gauhati High Court
Case No : 343 of 2014

BAJAJ ALLIANJ INSURANCE COMPANY APPELLANT
Vs
SMT. DHANALATA MECH & ORS. RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 5Rule 13](#), [Order 5Rule 13](#), [Order 5Rule 15](#), [Order 5Rule 15](#)

Citation : (2017) 04 GAU CK 0012

Hon'ble Judges : Kalyan Rai Surana

Bench : SINGLE BENCH

Advocate : R. Goswami, I. Alam, M. Saikia, S. Roy, A.K. Gupta, R.S. Mishra,?
R.C. Paul, P.J. Saikia

Judgement

1. Heard Mr. R. Goswami, the learned counsel for the petitioner, Mr. A.K. Gupta, the learned counsel for respondents No.1, 2 and 10, Ms. S. Roy, the learned counsel for the respondent No.3 as well as Mr. P.J. Saikia, the learned counsel for the respondents No.5 to 9 in CRP No. 343/14. In CRP No. 344/14, the counsels, viz., Mr. R. Goswami appears for Petitioner, Mr. P.J. Saikia for the Respondents No.1 to 5 and Ms. S. Roy of the respondent No.6. None appears for the other respondents although notice of this revision has been served on them.

2. Challenge in the CRP No. 343/14 is the order dated 18.03.2014 passed by the learned Additional District Judge, Dibrugarh (hereinafter referred to as the "learned Trial Court") in MAC Case No. 39/2010, by which the prayer made vide petition No. 390/14 dated 18.03.2014 to examine the Investigating Officer of Moran PS Case No.24/2010 corresponding to GR Case No. 155/2010 was rejected. The petitioner in this case was arrayed as respondent No.2 in the said MAC Case No. 38/2010, which was filed by the respondents No.1 and 2 herein.

3. The case of the petitioner is that they had conducted an investigation of their

own in connection with the claim made in MAC Case No. 38/2010 and their investigator had submitted a report on 19.03.2010, and as per the said investigation report, the driver, who was at the time of accident was driving the offending vehicle was only authorized to drive a motor-cycle, scooter and Light Motor Vehicle, but was not authorized to drive a "passenger carrying vehicle". The petitioner had not filed the said report along with their written statement filed on 04.09.2010. Later on, the petitioner had filed a petition, being petition No. 466/13 dated 19.11.2013 to allow the petitioner to file an additional written statement. The learned Trial Court, by order dated 19.11.2013, rejected the said petition and the investigation report was not taken on record. The petitioner herein had filed the Evidence -on- affidavit of their witness and, as such, by the same order, the case was fixed on 20.12.2013 for further evidence of the Opp. Parties in the said case and for cross examination.

4. Thereafter, the petitioner had filed four petitions bearing No. 130/14, 131/14, 132/14 and 133/14, inter-alia, to cancel the previous evidence, accept the fresh evidence filed, accept additional evidence and additional written statement. The learned Trial Court, by order dated 10.02.2014 held that as issues have been framed, claimant's witnesses have been cross examined by the petitioner herein, as such, by allowing the petitioner herein to file additional written statement will take back the trial at its initial stage. It was further held that as a similar prayer was earlier rejected by order dated 19.11.2013, the prayers made by the petitioner herein were also rejected and the case was posted on 18.03.2014 for further evidence of the Opposite Parties therein and for cross examination of witnesses.

5. On 18.03.2014, the petitioner herein filed petition No. 390/14 dated 18.03.2014 to examine the Investigating Officer of Moran PS Case No.24/2010 corresponding to GR Case No. 155/2010 was rejected by the order dated 18.03.2014, impugned herein.

6. The petitioner had filed CRP 242/14 before this court, but by order dated 29.08.2014, the same was withdrawn with leave to file a fresh revision application. Armed with such leave, the petitioner has filed the present revision to challenge the said order dated 18.03.2014.

7. On the perusal of the present revision application, it appears that there are subsequent events happening after the passing of the impugned order dated 18.03.2014. The police had submitted their final report in connection with Moranhath P.S. Case No. 24/2010, which was accepted by the learned Sub Divisional Judicial Magistrate, Charaideo Sonari and, as such, a petition dated 25.04.2015 was filed before the learned Trial Court for allowing the petitioner to examine the Petitioner's Investigator, namely, Sri Pulak Ranjan Kalita. It is projected that by order dated 15.05.2014, the said prayer was also rejected. The petitioner herein has not assailed the said subsequent order dated 15.05.2014 or any subsequent orders passed by the learned Trial Court in the said MAC Case No. 39/2010.

8. The learned counsel for the petitioner has referred to the provisions of Rule 8 and Rule 20 of the Assam Motor Accidents Claims Tribunal Rules, 1960, which reads as follows:- "8. Summoning of witnesses. - If an application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved, if any, issue summons for the appearance of such witnesses, unless it considers that their appearance is not necessary for a just decision of the case." xxxx xxxx xxxx 20. Code of Civil Procedure to apply in certain cases. - The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to the proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII and Order XXIII Rules 1 to 3."

9. The learned counsel for the petitioner further submits that the said Assam Motor Accidents Claims Tribunal Rules, 1960 were framed under the Motor Vehicles Act, 1939 and further submits that assuming but not admitting that these Rules and actions being taken under such Rules are not saved by the provisions of section 217 of the Motor Vehicles Act, 1988, even then, provisions similar to Rule 8 of the Assam Motor Accidents Claims Tribunal Rules, 1960 are contained in Rule 105 of the Assam Motor Vehicles Rules, 2003, which is as follows:- "105. Summoning of witnesses. - If an application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved, if any, issue summons for the appearance of such witnesses, unless it considers that their appearance is not necessary for a just decision of the case."

10. It is also submitted that assuming that the Assam Motor Accidents Claims Tribunal Rules, 1960 is no longer applicable by the framing of the Assam Motor Vehicles Rules, 2003, then the rigours of pleadings as required under the Civil Procedure Code would not be applicable. Hence, the learned Trial Court could not have closed the doors for the petitioner to prove their defence, merely because the document in question was not introduced earlier at the time of filing of written statement.

11. It is further argued that the specific plea in paragraph 11 of their written statement is that they had taken a stand that the other offending vehicle was responsible for the accident, The said paragraph 11 is re-produced below:- "11. That this Opposite Party does not admit and denies the allegation that the vehicle bearing No. AS-03-AC-0388 (Winger) was involved in the above-alleged accident and it was driven in a rash and negligent manner and the petitioner is put to strict proof of the same. Without prejudice to the above contentions, this respondent most humbly submits that the alleged accident is due to the sole negligence on part of the driver of TP vehicle bearing registration No. AS-23-F-2496 (Maruti Alto) himself as such this insurance company is not liable to pay any compensation."

12. It is submitted that the police was required to be summoned only to prove

the aforesaid specific plea of the petitioner in their written statement and for no other purpose. Hence, it is submitted that the previous rejection of additional written statement or refusing to allow the petitioner to summon their Company's investigator cannot preclude the petitioner to prove their case as projected in the written statement.

13. Per contra, Mr. P.J. Saikia, the learned counsel for the claimants/ respondents No.5 to 9 in CRP No. 343/14 and the Respondents No.1 to 5 in CRP 344/14 contends that the first petition of the petitioners for filing additional written and documents was rejected by order dated 19.11.2013, the second petition for filing fresh evidence was rejected by order dated 19.02.2014 and the petition filed on 18.03.2014 was the third in the series of the similar petitions, which culminated in the passing of the order impugned in the present revision. He submits that the petition dated 18.03.2014, upon which the impugned order was passed, was hopelessly barred by the principles of res-judicata.

14. It is further forcefully argued that in the claim petition of MAC Case No. 39/2010, which is the subject matter of CRP No. 343/14, at paragraph 10 thereof, it had been stated by the respondents No.1 to 5/claimants their written statement that Moranhat Police Station GDE No. 33/10 dated 02.03.2010, corresponding to Moranhat Police Station Case No. 24/2010 was registered and in response to the said statement, the petitioner herein had taken a specific defence plea in paragraph 14 thereof that they do not admit and had denied that the Moranhat P.S. No. 24/2010 had been registered at all. The said statement is reproduced below:- "14. That this Opposite Party does not admit and denies that the Moranhat Police Station registered a case vide No. 24/10 in respect of the alleged accident involving the vehicle No. as nothing has been mentioned about it by the claimant in para 9 of the claim petition. Hence, the petitioner is put to strict proof of the same with documentary evidence."

15. By the above, the learned counsel for the respondents No.1 to 5 submits that having denied the existence of the said case Moranhat P.S. No. 24/2010 arising out of Moranhat P.S. GD No. 33/2010, the petitioner cannot be permitted to lead any evidence to the contrary, which was sought to done in the present case as the petitioners are praying to allow them to examine the Investigating Officer of Moran PS Case No.24/2010 corresponding to GR Case No. 155/2010, which corresponds to the Moranhat P.S. GDE No. 33/2010.

16. It is further submitted that in the present case in hand, the petitioner having suppressed their own Investigation Report dated 19.03.2010 while filing their written statement on 04.09.2010, has been trying to fill-up their lacuna and in the process, the disposal of the claim case of the year 2010 has been unnecessarily delayed. It is also submitted that this court ought not to permit the petitioner to fill up the lacuna, which, if allowed, would cause irreparable prejudice to the respondents.

17. The counsels appearing for the other respondents have adopted the

arguments advanced by the learned counsel for the respondents No.1 to 5 in CRP No. 343/10. At the Bar, all the learned Counsels for the parties are ad-idem that the facts involved in CRP No. 343/10 are para-materia with the facts involved in CRP No. 344/10 and that their arguments made in one revision will cover for the other revision also. In view of the unison and/or unanimity on the same at the Bar, this Court has accepted the same.

18. Having heard the learned counsels for the appearing parties and upon the perusal of the materials on record, this court is of the view that it is permissible for a defendant in a suit or proceeding to take an inconsistent plea. If any authority is required on that one may refer to the case of (1995) Supp (3) SCC 179. Moreover, in the present case in hand, it is seen that notwithstanding that a plea was taken in paragraph 14 of the written statement filed by the petitioner that Moranhat P.S. Case No. 24/2010 was not registered, the petitioner had stated in paragraph 11 of the same written statement (as quoted above) that the alleged accident was due to the sole negligence on part of the driver of the third party vehicle bearing registration No. AS-23-F-2496 (Maruti Alto), as such, the petitioner herein was not liable to pay any compensation.

19. Thus, notwithstanding the previous orders dated 19.11.2013 and 19.02.2014 passed by the learned Trial Court, this court is of the view that a party has an indefeasible right to prove the plea taken in the written statement. Therefore, by disallowing the petitioner to prove his pleaded case by summoning the concerned police, this court is of the considered view that the learned Trial Court has committed jurisdictional error, which is liable to be corrected under superintending jurisdiction of this court. Therefore, both the impugned orders dated 18.03.2014 passed by the learned Additional District Judge, Dibrugarh in MAC Case No. 38/2010 and MAC Case No. 39/2010 are liable to be interfered with and accordingly, the both the said orders are set aside by directing the learned Trial Court to permit the petitioner herein to summon the concerned police personnel to prove their specific plea taken in paragraph 11 of their written statement filed in both the MAC Cases. It is made clear that it would be open for the learned Trial Court to prevent the petitioner herein from introducing any evidence, either oral or documentary, which is unconnected to the pleadings in their written statement.

20. The parties are directed to appear before the Court of the learned Additional District Judge, Dibrugarh, in MAC Case No. 38/2010 and MAC Case No. 39/2010 on 03.05.2017 to seek further instructions from the said learned court. As this is now an old case of the year 2010, this court hopes that the learned Trial Court shall dispose of the case as early as possible and all the parties to the case are also expected to co-operate with the court by avoiding adjournments at their end.

21. This revision is allowed. The parties are left to bear their own cost.