

(1992) 07 PAT CK 0033

In the Patna High Court

Case No : Appeal From Original Order No. 68 of 1987

Branch Manager, United India Insurance Company

APPELLANT

Vs

Md. Ibrahim and Another

RESPONDENT

Date of Decision : 31-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (1993) 1 BLJR 447 : (1993) 1 PLJR 248

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Judgement

R.N. Praead, J.—This appeal has been filed against the judgment and order dated 24-5-1986 passed by the District Judge, Chapra in Claim case No. 7 of 1985, allowing the claim in terms of the compromise entered into between the parties.

2. The claim case was filed by respondent No. 1. The appellant is the in sever. On 29-8-1982, the son of respondent No. 1, aged about seven years, was killed in an accident by a vehicle bearing registration No. B.R.D.1045. Respondent No. 1 claimed compensation amounting to Rs. 65,000. The appellant and respondent No. 1 settled the claim at Rs. 35,000 and file the compromise petition signed by learned Counsel for the parties and in terms of the compromise, the claim case was disposed of and accordingly decree sheet, was ordered to be prepared in terms of the compromise.

3. learned Counsel appearing on behalf of the appellant submitted that the compromise petition has not been signed by the parties: and on account of the amendment in the provisions of Order XXIII, Rule 3 of the CPC a lawful agreement or compromise, before it can be given effect to by recording the same, should be signed by the parties themselves and if it is signed merely by learned Counsel for the parties, the same cannot be acted upon. In support of his submission, learned Counsel for the appellant relied on a decision in Kripal Garain and Ors. v. Shyam Narayan and Ors. 1985 PLJR 315 in which it has been held that for recording compromise, the document should be in writing and

signed by the parties and in absence of such a document, the court cannot take notice of such a compromise under Order XXIII, Rule 3 of the Code of Civil Procedure.

4. The provisions of Order XXIII, Rule 3 of the CPC after amendment by amending Act No. 104 of 1976 are as follows:

Compromise of suit--Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reason to be recorded, thinks fit to grant such adjournment.

5. By the amendment in Order XXIII, Rule 3 of the Code of Civil Procedure, it has been introduced that the compromise petition should be in writing and signed by the parties, before the same is acted upon. The object and reason is to avoid the setting up of oral compromise and to avoid delay in process of the suit. Some times on account of setting up of oral compromise takes lot of time in disposal of a suit and hence it has been introduced in Order XXIII, Rule 3 of the CPC that a compromise should be in writing and signed by the parties. The expression "signed by the parties" includes learned Counsel for the parties, as there is no indication in the amended provisions that signatures by counsel for the parties have been excluded or that the parties were personally required to sign the compromise petition. Under Order VI, Rule 14 of the CPC it has been made clear that every pleading shall be signed by the party and his pleader. The signature of parties under Order VI, Rule 14 is mandatory and only signature of the counsel is not enough so far pleadings are concerned. In absence of any such specific provision under Order XXIII, Rule 3 of the Code, in my view, it would not be proper to hold that the compromise petition signed by learned Counsel for the parties cannot be acted upon, unless the same has been signed by the parties.

6. In the case of *Byram Pestonji Gariwala v. Union Bank of India and Ors.* AIR 1991 SC 224 it has been held that the expression "in writing and signed by the parties" as has been introduced in Order XXIII, Rule 3 includes duly authorised representative and counsel. A compromise in writing and signed by the counsel for the parties but not signed by the parties in person is valid and is executable even in the case extending beyond the subject-matter in issue.

7. For the reasons discussed above, it is held that there is no substance in the

submissions made by learned Counsel for the appellant and the compromise signed only by the learned Counsel is valid and is binding upon the parties.

8. In the result the appeal is dismissed, but in the circumstances of the case, there shall be no order as to cost.