
(2004) 12 AHC CK 0119

In the Allahabad High Court

Case No : C.M. Application No. Nil of 1998 in F.A.F.O. No. 246 of 1998

Dr. Prem Pal Singh and Another

APPELLANT

Vs

Pokar Ram and Another

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

High Court Rules, 1952 — Rule 8

Motor Vehicles Act, 1988 — Section 166, 168, 173, 174, 175

Uttar Pradesh Motor Vehicles Rules, 1998 — Rule 209, 211, 220, 220(1), 220(2)

Citation : (2005) 1 AWC 818

Hon'ble Judges : R.B. Misra, J;A.K. Yog, J

Bench : Division Bench

Advocate : Madhav Jain, for the Appellant;

Judgement

A.K. Yog and R.B. Misra, JJ.—The case was listed for orders before us. The Bench Secretary pointed out that, according to the report of Stamp Reporter dated 19th May, 1998 present first appeal from order under Motor Vehicles Act, 1988, as amended up to date (hereinafter called the Act) was filed without annexing formal order. Appeal was presented in the Registry on 20th May, 1998. There is no application for granting time. Appeal was accompanied by application No. Nil of 1998 with the prayer that two months be allowed for filing certified copy of formal order. However, this application was listed first time before us on 6.12.2004. The Court raised objections on the ground that application seeking time for filing formal order was not supported by means of affidavit and further that two months time prayed for in the said application dated 20.5.1998 has expired long back, hence this application was of no consequence.

2. Learned counsel for the appellant has made two fold arguments (i) no formal order is contemplated to be prepared and/or required under the Act and hence not feasible to be filed along with appeal u/s 173 of the Act read with Rules 220 and 222 of U. P. Motor Vehicles Rules, 1998 (for short called the Rules).

3. In support of the above submission he has placed reliance upon the Division

Bench order dated 12.10.1999 passed in First Appeal From Order No. (617) of 1999, New India Assurance Co. v. Smt. Chandra Devi and Ors. Ltd., Allahabad. In the aforesaid F.A.F.O No. (617) of 1999, a Division Bench of this Court vide order dated 12.10.1999 directed concerned Motor Accident Claims Tribunal to pass an order on the issue as to how Tribunal can refuse to prepare formal order. The said order dated 12.10.1999 is reproduced below :

"The District Judge, Nainital is directed to pass a judicial order giving reasons as to why a decree/formal order is neither liable to be prepared nor it can be issued for Motor Accident Claims Tribunal Award passed u/s 168 and other provisions of Chapter 12 of the Motor Vehicles Act. For presenting an appeal u/s 173 of the Motor Vehicles Act, which is also required to be in accordance with the provisions of Chapter IX, Rule 8 of the Rules of High Court, the memorandum of appeal has to be accompanied with an order of the decree/formal order against which the appeal or a revision application is directed.

The appellant. New India Assurance Co. Ltd., who has filed the present appeal against the award dated 26.3.1999 in Motor Accident Claims Petition No. 155 of 1998 has annexed a copy of administrative order, dated 26th November, 1998 passed by the District Judge, Nainital.

This question has arisen earlier also and the matter requires consideration on the judicial side. The Learned District Judge, Nainital would pass the orders, as directed above, within two weeks of services of a certified copy of this order. The office will issue copy of this order to the appellant free of cost for its service on the District Judge, Nainital.

List this petition on 2nd November, 1999. A copy of this order be given to the learned counsel for the appellant so that the same may be filed in the Court of the Vth Additional District Judge, Nainital informing him that the hearing of appeal is fixed for 2nd November, 1999 so that the learned Vth Additional District Judge, Nainital may pass appropriate orders."

4. After considering certain provisions of the Act, Rules and Code of Civil Procedure, passed order dated 27.10.1999 holding that preparation of formal order/decreed was not obligatory or required under relevant provisions of law. The relevant passage from the said order is reproduced :

"Thus, it is clear that provisions of Order XX, C.P.C. have not been made applicable to the proceeding before the Claims Tribunal, wherein judgments are given and decree are prepared, nor the provision of Order XLI, C.P.C. have been made applicable which makes it compulsory for that appellant to file the copy of decree along with memorandum of appeal. Thus, it is not obligatory either to prepare the decree or to file the copy of the same along with memorandum of appeal under Rule 222, U. P. Motor Vehicles Rules, 1998.

The High Court of Punjab and Haryana in Pritpal Singh v. New Surajpal Transport Co., 1974 ACJ 277 has discussed these provisions in detail and has held that

judgment and award may be contained in the same judgment and the rules do not require the Tribunal to draw judgment and award separately. There is no necessity of drawing a decree in conformity with the judgment given by the Claims Tribunal. Thus, there does not seem to be any necessity to prepare the decree with reference to an award given by Motor Accidents Claims Tribunal. However, judgment and award must contain full particulars of the parties and their addresses. It is also desirable that the amount of compensation claimed be invariably mentioned, though the compensation awarded along with interest is always written in the operative portion."

5. On the basis of the aforequoted order of Tribunal, Division Bench of this Court passed following order dated 21.7.2000 :

"We have perused the order of the Motor Accident Claims Tribunal, Nainital dated 27.10.1999, wherein it has been observed that it is not obligatory to prepare formal order under Rule 222, U. P. Motor Vehicles Rules, 1998.

In view of the above, the filing of the formal order is dispensed with."

6. We have, however, noticed as of fact that formal orders are being filed along with memorandum of appeals arising with judgment and order passed by Motor Accident Claims Tribunal in the State of U. P. exercising jurisdiction under the Act and the Rules. It is seldom, that Motor Accident Claims Tribunal has refused to prepare formal order.

7. In the aforesaid circumstances, an uncertainty prevails and litigant as well as counsel are not sure as to whether formal order is to be annexed with the appeal under the Act or not.

8. We, therefore, propose to examine relevant provisions of law and settle the issue to end the uncertainty.

9. Application for compensation in the case of accident contemplated under Act, is provided u/s 166 of the Act. Section 168 of the Act provides for rendering award by Motor Accident Claims Tribunal.

10. Section 168 of the Act is reproduced :

"168. Award of the Claims Tribunal.--(1) On receipt of an application for compensation made u/s 166 the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (Including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be :

Provided that where such application makes a claim for compensation u/s 140 in

respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award of the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

11. Section 173 of the Act, contemplating appeal against award rendered by Motor Accident Claims Tribunal, reads :

173. Appeals--(1) Subject to the provisions of Sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court :

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall be against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than ten thousand rupees.

It will also be useful to reproduce Sections 174 and 176 of the Act, which read :

"174. Recovery of money from insurer as arrear of land revenue.--Where any amount is due from any person on an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

176. Power of State Government to make rules.--A State Government may make rules for the purpose of carrying into effect the provisions of Sections 165 to 174, and in particular such rules may provide for all or any of the following matters, namely :

(a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications ;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter ;

(c)

(d)

(e)"

12. In pursuance to the power conferred u/s 176 of the Act State Government has framed U, P. Motor Vehicles Rules, 1998.

13. Relevant Rules 209, 211, 220 and 222 of the Rules are reproduced below :

"209. Framing of issues.--After considering the application and the written statements and oral statements of the parties, the Claims Tribunal shall proceed to frame the issues on which the right decision of the claim appears to it to depend.

211. Determination of issues. --After framing the issues the Claims Tribunal shall proceed to record evidence thereon which each party may like to produce.

220.. Judgment and award of compensation. --(1) The Claims Tribunal, in passing orders, shall record concisely in judgment the findings on each of the issues framed and the reasons for such finding and make an award, specifying the amount of compensation to be paid by the insurer or in the case of a vehicle exempted under Sub-section (2) or (3) of Section 146 by the owner thereof and shall also specify the person or persons to whom compensation shall be payable.

222. Form and number of appeals against the decision of Claims Tribunal.--(1) An appeal against the award of a Claims Tribunal shall be preferred in the form of a memorandum stating concisely the grounds on which the appeal is preferred.

14. At the outset we may point out that expression "judgment" and "award" have not been defined in the Act or in the Rules. What is meant by expression "Judgment" and "Award" and whether they refer to the same document. And again whether "Award" is different from judgment and both have to be annexed with memorandum of appeal u/s 173 of the Act, is the issue under consideration.

15. In order to appreciate the issue and to answer the said question, we can derive our conclusion from the language used under the Act and Rules themselves.

16. Section 173 of the Act confers right to file appeal against an award (in contradistinction to the expression "judgment"). Section 173 uses the word "award" and not "judgment" and/or "order" of the Tribunal. Section 174 provides that whether any amount is due to any person under any award, the Claims Tribunal on application being made to it by person entitled to the amount, may issue a certificate for the amount to the Collector for being realised as arrears of land revenue. Again we find, Legislature has deliberately avoided to use the word "judgment and order" and it provides that person must be entitled to "compensation amount" under an award. It is evident that award is different from "judgment".

17. Section 176 of the Act confers power upon the State Government to provide Rules for issuance of certificate referred to u/s 174 of the Act. Reverting to Rule 220 of the Rules, we find that Claims Tribunal is under statutory obligation, while passing order/judgment on the claim petition for compensation to consider the application and to frame the issues on the basis of respective pleadings of the parties and thereafter proceed to record reasons and which is to be followed by "findings" thereon. Said rule further requires that Tribunal shall also specify the amount of compensation to be paid by the insurer or the owner, as the case may be, and shall also specify person or persons to whom compensation is payable. Rule 220 (2) provides that compensation is awarded to two or more persons under Sub-rule (1) the Claims Tribunal shall also specify the amount payable to each of them and Rule 220 (3) further requires while disposing of claims for compensation, makes such orders regarding costs and expenses incurred in the proceeding as it thinks fit.

18. Adjudication of claim petition is thus by rendering judgment as required under said Rule 220 of the Rules. It is also our experience that judgment and order passed by Tribunals do not contain full particulars of the parties and the operative portion of the judgment also does not refer to full particulars of parties. It generally refers to (i) applicant No. 1 and applicant No. 2 and so on (ii) opposite parties Nos. 1 and 2 and so on. Operative portion in the order/judgment of the Tribunal also does not disclose exact amount in terms of money payable to a party inasmuch as it only specify quantum of compensation payable to certain parties. Exact amount in terms of Rupees ; interest amount thereon in Rupees etc. is not indicated. Operative portion of the order/judgment of a Tribunal does not disclose the amount payable to whom and by which party, Rule 222 (1) of the Rules, quoted above shows that appeal lies against an "award" and "not against the judgment" and similarly under Rule 222 (2) expression used as "judgment and award".

19. From the expression used under Rule 220/222, it is absolutely clear that judgment as such, which includes operative portion is different from award. It will be preposterous to conclude that "Award" is also not to be prepared since there is no procedure prescribed for its preparation.

20. On the other hand Chapter IX Rule 8 (a), Rules of Court 1952, applicable to the High Court, reads :

"8. Document to accompany memorandum of appeal or revision application.-- Every memorandum of appeal or application for revision shall be accompanied by :

(a) a copy of the decree or formal order against which the appeal or application is directed ;"

21. When appeal is provided to the High Court, proceedings are to be regulated by the rules of court. Rules of this Court requires, formal order or decree, as the case may be, must be filed.

22. It is made clear that the expression "award" u/s 173 of the Act read with Rule 222 of the Rules, is nothing but a "formal order" or "decree" under Code of Civil Procedure.

23. We take support from the argument adopted by Full Bench in the case of Shanti Devi and Others Vs. General Manager, Haryana Roadways, Ambala and Others,

For convenience relevant extract of para 7 is reproduced below :

".....I am fortified in this conclusion of mine especially from the language of Rules 19 and 21 where the word "judgment" and the word "award" have been used separately. Under Rule 21 it is provided that the appeal shall be accompanied by a copy of the judgment and the award appealed against and in Rule 19 it is mentioned that the Claims Tribunal is to record in judgment concisely a finding on each of the issues framed under Rule 16 and the reasons for such finding. The proceedings before the Claims Tribunal closely resemble to the proceedings in a civil court and to use the language of their Lordships of the Supreme Court in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, , the Claims Tribunal for all intents and purposes discharges the same functions and duties in the same manner as a court of law is expected to do. In this view of the matter I hold that the proceedings before the Claims Tribunal are not in the nature of arbitration proceedings and that the Claims Tribunal while disposing of the claims acts as a court....."

24. It is conceded before us that Rules nowhere deal with the preparation of certificate contemplated u/s 174 of the Act.

25. It shows that unless "Award" or call it "formal order" is prepared indicating-unambiguously showing all the parties (their legal representative) and the exact amount of compensation, interest and cost etc. shown in terms of exact amount in Rupees, no certificate can be issued by Tribunal for being forwarded to the Collector for being realised as land revenue for the benefit of the claimants. This exact amount of compensation, interest cost have to be calculated and indicated in terms of money on the basis of operative portion of the judgment rendered by Tribunal and that can be done by making award (may it be called as formal order or decree) and then only a certified copy can be issued.

26. For the reasons indicated above and also in order to have consistency and to avoid, uncertainty in Court proceedings, we are of the view that a formal order must be prepared as is prepared in civil proceedings.

27. In view of the above we do not agree with the contention of learned counsel for the appellant that formal order/award is not required.

28. In the end, learned counsel for the appellant submits that he may also be granted time to file formal order.

29. In view of the above, we allow the learned counsel for the appellant to file

formal order within two months from today. Tribunal shall prepare the award in the light of the observation made above. Appellant shall file certified copy of this order before Tribunal.

30. Registrar General is directed to take steps for getting a copy of this judgment circulated to all District Judges and Motor Accident Claims Tribunal in the State for information and strict compliance accordingly.

31. List after two months.