

(2012) 03 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1531 of 2003

Gunmala Jalan and Others

APPELLANT

Vs

United India Insurance Co. Ltd., Baran

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 15, Order 11 Rule 17, Order 11 Rule 21, Order 11 Rule 23
Motor Vehicles Act, 1988 — Section 166, 169, 173, 174

Citation : (2013) 1 ACC 226 : (2012) 2 TAC 711

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : Sanjay Singhal, for the Appellant; Chitra Goyal, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is a misc. appeal filed by claimants u/s 173 of the Motor Vehicles Act (for short called "the Act") against an award dated 22nd April, 2003 passed by Motor Accident Claims Tribunal, Baran, in Claim Case No. 21/2000. By impugned award, the Tribunal dismissed the claim petition filed by the claimants u/s 166 of the Motor Vehicles Act essentially on the ground that it is not maintainable.

2. So, the short question that arises for consideration in this appeal is whether Tribunal was justified in dismissing the claim petition of the claimants as not maintainable.

3. Facts of the case lie in a narrow compass.

4. On 22nd June, 1997, one Sunder Lal with the members of his family consist of his wife and three children were travelling in a Tata Sumo Car bearing No. RJ-28/C-0558 from Baran to Mathura when it met with an accident causing death of Sunderlal and sustaining of injuries to the remaining members of the family sitting in the car.

5. This gave rising to filing of claim petition out of which this appeal arises by the legal representatives of deceased Sunder Lal u/s 166 of the Motor Vehicles Act claiming compensation for the death of Sunder Lal. It was contested by the non applicants inter alia on the ground that since the other occupants of the car i.e. present legal representatives who survived and only suffered injuries had already filed a claim petition individually claiming compensation for the injuries sustained by each in the same accident and that having been decided by the Tribunal on merits, the present claim petition filed subsequent to it by the same legal representatives is barred in the light of provisions of Order II, Rule 2 of C.P. Code.

6. This objection found favour to the Claims Tribunal and accordingly it was upheld resulting in dismissal of claim petition as not maintainable. It was held that since the present claimants had filed their respective claim petitions for claiming compensation for the injuries sustained by them in the same accident individually and therefore, this claim petition claiming compensation for the death of Sunderlal too should have been filed alongwith their claim petitions. It was held that claim petition now filed subsequent to their disposal is not maintainable as it is hit by provisions of Order II, Rule 2 of C.P.C. It is against this award, the claimants have felt aggrieved and filed this appeal.

7. Learned Counsel for the appellant while assailing the impugned award contended that the Tribunal erred in placing reliance upon the provisions of Order II, Rule 2 of C.P. Code for dismissing the claim petition. While referring to Rule 10.28 of Rajasthan Motor Vehicles Rules, 1990, he contended that in terms of Rule 10.28 (b), the provisions of Order II, of C.P. Code are not applicable to the cases filed under the provisions of Motor Vehicles Act. According to him, since principles underlying under Order II of the Code are not made applicable to the facts of this case and, hence, the Tribunal was wrong in placing reliance on Order II, Rule 2 ibid in ignorance of Rule 10.28 (b) for dismissing the claim petition as being not maintainable.

8. In reply, learned Counsel for the respondent supports the impugned award.

9. Having heard the learned Counsel for the parties and on perusal of the record of the case, I am inclined to accept the submission of the learned Counsel for the appellant as in my opinion, it has a force and hence the appeal deserves to be allowed by setting aside of the impugned award and in consequence to remand the case to the Claims Tribunal for deciding the claim petition on merits.

10. Rule 10.27 and 10.28 of Rajasthan Motor Vehicles Rules, 1990 which are relevant for the disposal of this appeal are reproduced infra:-

10.27 Power vested in Civil Court which may be exercised by Claims Tribunal.--
(1) Without prejudice to the provisions of Section 169:-

(a) every Claims Tribunal, may exercise all or any of the powers vested in a Civil Court under the following provisions of the Code of Civil Procedure, 1908, in so far as they may be applicable namely:-

Sections 30, 32, 34, 35(a), 75(a) & (c), 76, 77, 94, 95, 132, 133, 144, 145, 147, 148, 149, 151, 152 & 153.

(b) and subject to the provisions of the Section 174.

(2) For purpose other than those specified in sub-rule (1), the Claims Tribunal may exercise all or any of the powers of Civil Court as may be necessary in any case for discharging its functions under the Act and these rules.

10.28. 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, namely:-

(a) Sections 28, 79 and 82.

(b) In the First Schedule, Order V, Rules 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 V, II, Rule 10, Order VIII, Rules 2 to 5 (both inclusive), 9 & 10; Order IX, Order XI, Rules 12 to 15 (both inclusive) 17 to 21 (both inclusive) and 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 34 (both inclusive), 10 to 20 (both inclusive) and 15 to 18 (both inclusive), Order XIX, Order XX, Rules 1 to 3 (both inclusive), 8, 11 and 20, Order XXI, Order XXII, Rules 1 to 7 (both inclusive), and 9; Order XXIII, Rules 1 to 3 (both inclusive); Order XXIV, Order XXVI, Rules 1 to 8 (both inclusive) and 15 to 18 (both inclusive), Order XXVII, Order XVIII, Order XXIX, Order XXX, Rules 1 to 15 (both inclusive) Order XXXVII, Rules 1 to 10 (both inclusive) and Order XXXIX, Rules 1 and 3 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.

11. Mere perusal of the aforequoted Rule 10.27 would go to show that powers of Civil Court, which are specified in sub-clauses (a) and (b) are exercisable by the Claims Tribunal. Similarly Rule 10.28 prescribes the procedure which is required to be followed by the Claims Tribunal while holding an enquiry contemplated under the Act. Sub-clause (b) of the Rule 10.28 in clear terms provide that Order II of C.P. Code is not applicable because it is not mentioned in the said sub-rule.

12. In the light of clear intendment of Rule 10.28 (a) & (b), one can take it that provisions of Order II of C.P. Code cannot be pressed into service by the parties while deciding the maintainability of the claim petition filed under the Act. In other words, non-applicants could not have raised a plea based upon the principles underlying under Order II, Rule 2 for opposing the claim petition because the said provisions expressly made not applicable to the proceedings filed under the provisions of the Motor Vehicles Act.

13. In my opinion, apart from non-applicability of principle of Order II, Rule 2 of the Code, the claim petition filed by the present legal representatives was maintainable for being tried on merits. It is not in dispute that filing of claim

petition earlier by the legal representatives was for injuries sustained by an individual person and had nothing to do so far as claim relating to death of Sunder Lal was concerned. If in one case, the part of the cause of action was about suffering of personal injuries to a particular person arising out of accident then so far as present case was concerned the part of cause of action was the death of Sunder Lal. There was, therefore, some distinction in so far as part of the cause of action in both the cases was concerned, and therefore, to invoke the provisions of Order II of the Code against the claimants was not proper. It being a welfare and beneficial legislation meant to provide relief to the victim of the accident, the benefit of such legislation cannot be denied by such technicalities.

14. I am, therefore, of the opinion that claim petition filed by the legal representatives of Sunder Lal claiming compensation for his death was maintainable for being tried on merits.

15. This being the only point raised by the non-applicants before the Tribunal, I cannot concur with such view and, hence, it is reversed. Accordingly and in the light of foregoing discussion, appeal succeeds and is hereby allowed. The impugned award is set aside. The claim petition is restored to its file for deciding the same on merits. Let parties now complete their pleading on merits by filing any other additional documents in addition to the one already filed. They are also granted to permission to amend the pleadings in case if they so wish. Parties shall appear before the Tribunal on 26th March, 2012. Let the records of the case be sent back to the Trial Court if requisitioned so as to reach before 26th March, 2012. The Tribunal shall decide the matter within six months from the date of parties' appearance by providing adequate opportunity to the parties to prove their respective case on merits.

No cost.