
(2008) 05 MP CK 0017
In the Madhya Pradesh High Court

Harikrishna Marmat

APPELLANT

Vs

Shabbir Hussain and Others

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2009) ACJ 2861

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—This order shall also govern the disposal of M.A. Nos. 1694, 1695 and 1696 of 2008 as all the appeals are arising out of one order dated 8.4.2008 passed by the Third Additional Member, M.A.C.T., Mandsaur, in different claim cases arising out of one accident and also parties in all the cases are one and the same except the claimants.

2. Short facts of the case are that all the claimants filed the claim cases alleging that on 14.1.2006 claimants were travelling in a jeep bearing registration No. MP 14-DA 0208 owned by respondent No. 1, driven by respondent No. 2 and insured with respondent No. 3. It was alleged that the loaded gun was in the jeep, all of a sudden by applying the brakes by respondent No. 2 rashly and negligently the trigger of gun was pressed with the result bullet of gun injured the claimants, it was alleged that the accident occurred because of rash and negligent driving of respondent No. 2, therefore, appellants are liable for payment of compensation.

3. Instead of filing the written statement an application was filed by respondent No. 3 under Order 7, Rule 11 of CPC wherein it was alleged that the injuries sustained by appellant were gun injuries which were having nothing to do with the rash and negligent driving of respondent No. 2, hence the claim cases were not maintainable, it was prayed that the claim cases be dismissed. After hearing the parties, learned Tribunal dismissed the claim cases filed by appellant-claimant, hence, this appeal.

4. Learned Counsel for the appellant argues at length and submits that in claim cases arising out of a motor accident only those provisions of CPC are applicable which are made applicable under Rule 240 of Madhya Pradesh Motor Vehicles Rules, 1994. It is submitted that Order 7, Rule 11 of CPC is not applicable for deciding the claim petitions. Learned Counsel placed reliance on a decision in the matter of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , wherein a case of collision between a truck and petrol tanker, after 4 1/2 hours of the accident tanker exploded and caught fire resulting in injuries to those assembled near it. Hon"ble Supreme Court held that the words "use of a motor vehicle" has a wider connotation and covers accidents which occur both when the vehicle is in motion and when it is stationary, use of a vehicle does not cease when it has been rendered immobile on account of breakdown or mechanical defect or accident. Further reliance was placed upon a decision in the matter of Ram Chandra and Others Vs. Rajasthan State Road Trans. Corporation and Others, , wherein a passenger who boarded a bus with three containers of kerosene and lit a matchstick for smoking bidi with the result kerosene containers caught fire. Hon"ble Rajasthan High Court held that accident occurred in the course of user of the bus and the use of the bus was the main contributory factor for the accident and is a related event. Reliance was also placed on a decision in the matter of Sneh Sharma and Others Vs. Sewa Ram and Others, , wherein a bomb was exploded in a bus and a passenger in a Matador which was overtaking the said bus sustained fatal injuries from splinters of the bomb, a Division Bench of Jammu and Kashmir High Court held that the facts already pointed out that the owner and crew of the bus did not pay any attention towards taking precautions for the safety of the passengers, although it was well-known that militant activities were gaining ground and immediate precautions against such activities were necessary. The accident arose out of the use of the vehicle and there is no doubt about it and the respondents are squarely responsible for the same. Reliance was also placed on a decision of this Court in the matter of Govind Kunwar v. Shambhu Singh M.A. No. 39 of 2002; decided on 6.7.2005 wherein because of heavy rainstorm driver of tractor stopped his tractor under a tree and due to rainstorm the tree fell on the tractor and crushed the driver, Division Bench of this Court held that the owner and insurance company of tractor are liable for payment of compensation. Learned Counsel submits that in the facts and circumstances of the case, the learned Tribunal committed error in dismissing the claim case.

5. Learned Counsel for the respondent No. 3 supports the order passed by learned Tribunal and submits that a reasoned order has been passed by learned Tribunal which requires no interference.

6. Rule 240 of Madhya Pradesh Motor Vehicles Rules, 1994, reads as under:

240. Procedure to be followed by Claims Tribunal in holding inquiries.- Applications of certain provisions of Code of Civil Procedure, 1908; save as otherwise expressly provided in the Act or these rules, the following provisions of

the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), namely, those contained in Order 5, Rules 9 to 13 and 15 to 20; Order 9; Order 18, Rules 3 to 10; Order 16, Rules 2 to 21; Order 18; Order 21 and Order 23, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal insofar as they may be applicable thereto.

7. From plain reading of aforesaid rule, it is evident that Order 7, Rule 11 of CPC has not been included by rule makers. Since the aforesaid rule has not been made applicable, therefore, there was no occasion for the learned Tribunal to dismiss the claim petition filed by appellant by accepting an application under Order 7, Rule 11 of Civil Procedure Code. Apart from this, the application filed by the respondent No. 3 is not a bona fide act on the part of respondent No. 3 as the same was filed after seeking number of opportunities to file the written statement.

8. In the facts and circumstances of the case, without making any observation on merits of the case in the opinion of this Court the impugned award cannot be allowed to sustain. Hence, appeal filed by appellant is allowed and the impugned award passed by learned Tribunal is set aside. Case is remanded to the learned Tribunal to decide the same on merits after giving an opportunity to file the written statement. Both the parties shall remain present before the learned Tribunal on 14.7.2008.

9. With the aforesaid observations, the appeal stands disposed of. A copy of this order be retained in all connected appeals.