

(2005) 07 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47677 of 2005

Jabir

APPELLANT

Vs

Motor Accident Claims Tribunal District Judge and Others

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Uttar Pradesh Motor Vehicles Taxation Act, 1997 — Section 110D, 166, 173

Citation : (2007) ACJ 885 : (2006) 1 AWC 480

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : V.K. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Vishesh Kumar Gupta, learned counsel for the petitioner.

2. The petitioner, Jabir, claims himself to be the owner of Tata 407 vehicle bearing Registration No. UP. 23/4016. The said vehicle met with an accident resulting in death of one Sri Ram Prasad, son of Pooran Singh. The dependents/legal heirs of the deceased, Ram Prasad, initiated proceedings for compensation u/s 166 of the U.P. Motor Vehicles Act, which were registered as Motor Accident Claims Petition 11 of 2003 (Chandra Pal and Ors. v. Jabir and Ors.). The aforesaid Motor Accident Claims Petition was decided under judgment and order of the Motor Accident Claims Tribunal/ District Judge, Moradabad dated 28th October, 2004. The relevant portion of the said judgment and reads as follows:

"Yachika anshtah virudh vipakshigan ish had tak sweekar ki jati hai yachigan beema company vipakshi sankhya 2 sey 240000/ rupya do lakh chalish hajar rupaye {pratkar may vyaj 8 pratishat sadharan vyaj ki dar sey yachika ki titi sey ta adayagi paney key adhikari hain pratkar ki dhanrashi meyn sey 300001=30000/ rupaye maye vyaj mritak Ram Prasad ki putriyon Kumari Pravesh, Kumari Lokesh, Kumari Shashi, Kumari Adesh va putra Sateyendra

{prateyk} key naam kramshah ek varsh, teen varsh, panch varsh, saat varsh yani unkey vyashk honey tak key liye kishi rashtriyakrit bank meyn samyavadhi yojana key antargat jama rahengey shesh dhanrashi yachi sankhya 1,2 va 3 {prateyk 30000/+30000/ rupaye may vyaj nakad paa sakegey pakshkar apana apana vaad vyay swayam vahan karegey kintu beema comapney ki policy ki sharton ka ulanghan honey key karan ukt dhanrashi veema company vipkashi sankhya 1 sey vashool kar sakeygi."

3. It is not in dispute that the petitioner was also one of the defendants in the aforesaid claim petition and the matter was contested on his behalf and thereafter award has been made.

4. The Insurance Company deposited the money in terms of the award dated 20th October, 2004 and thereafter initiated proceedings against the petitioner for recovery of the amount so paid in terms of the said award as quoted herein above, the case was registered as Execution Misc. Case No. 3 of 2004.

5. At this stage the petitioner has approached this Court by means of the present writ petition for the following reliefs:

"(a) issue a writ, order or direction in the nature of certiorari quashing the order dated 28.10.2004 of passed by the Motor Accident Claims Tribunal/ District Judge, Jai Prakash Nagar in M.C.A. No. 11 of 2003 Chandra Pal and Ors. v. Jabir and Ors. against the petitioner.

(b) issue a writ, order or direction in the nature of mandamus not to recover the amount in Execution Misc. No. 3 of 2004 New India Insurance Company Ltd. v. Jabir pending in court of Motor Accident Claims Tribunal/ District Judge, J.P. Nagar against the petitioner.

(c) issue nay other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case.

(d) Award the cost of the petitioner in favour of the petitioner."

6. In the opinion of the Court both the reliefs (a) and (b) prayed for by the petitioner at totally misconceived, inasmuch as if the petitioner is aggrieved by the award of the Motor Accident Claims Tribunal, to which he was one of the defendants, it is open to the petitioner to file an appeal in accordance with the provisions of Motor Vehicles Act before the Hon"ble High Court. So long as the award of the Tribunal is not interfered with on an appeal filed by the party aggrieved, the same has to be executed in accordance with law.

7. It is, however, contended on behalf of the petitioner that the petitioner does not answer the description of aggrieved party and therefore, the appeal is legally not maintainable.

8. In the opinion of the Court the contention so raised by the petitioner is totally misconceived.

9. From the award of the Motor Accident Claims Tribunal passed in the Motor Accident Claims Petition, it is apparent that the petitioner, has been held responsible to reimburse the payment made by the Insurance Company as the condition of the policy has been breached and he therefore, answers the description of aggrieved party so as to maintain an appeal u/s 173 of the U.P. Motor Vehicles Act.

10. On behalf of the petitioner reliance has been placed upon a judgment of Kerala High Court in the Case of Wilson v. Lalitha Bai Amma ; (2004) III ACC 921 (DB) as well as of the judgment of the Hon''ble Supreme Court in the case of United India Insurance Co. Ltd. v. Rajendra Singh and Ors. etc. ; 2001 (1) AJR 264 (SC).

11. In the opinion of the Court both the aforesaid judgments relied upon by the petitioner have no application in the facts of the present case.

12. It is further contended on behalf of the petitioner that the availability of alternative remedy is not absolutely bar in. In support thereof the petitioner has placed reliance upon the judgment of Hon''ble Supreme Court in the case of Smt. Tipu Vs. New India Assurance Co. Ltd., . The legal proposition laid down in the aforesaid judgment by the Hon''ble Supreme Court is not in dispute. However, in the facts of present case this Court is satisfied that the remedy available to the petitioner is statutory and efficacious. Therefore, the relief (a) as prayed for by the petitioner cannot be granted. As a matter of fact the judgment of Hon''ble Supreme Court in the case of Narendra Kumar and Another Vs. Yarenissa and Others, , supports the views, which has been taken by this Court. Relevant portion of the aforesaid judgment in the Case of Narendra Kumar and Anr., etc. (Supra) is quoted herein below.

" 8... To take a view that the owner is not an aggrieved appty because the Insurance Company is liable in law to answer judgment would lead to an anomalous situation in that no appeal would lie by the tort-feasers against any award because the same logic applies in the case of driver of the vehicle. The question can be decided a little differently. Can a claim application be filed against the Section 110-D of the Act? The answer would obviously be in the negative. If that is so, they are persons against whom the claim application must be preferred and an award sought for otherwise the insurer would not be put to notice and would not be liable to answer judgment as if a judgment-debtor. Therefore, on first principle it would appear that the contention that the owner of a vehicle is not an aggrieved party is unsustainable. That is the view taken by the High Court of Allahabad in United India Fire and General Insurance Co. Ltd., Kanpur and Another Vs. Gulab Chandra Gupta, and Oriental Fire and General Insurance Co. Ltd., New Delhi and Another Vs. Smt. Rajendra Kaur, , as well as the High Court of Kerala in K.R. Visalakshi and Others Vs. Pookodan Hamza and Others, , commends us.

(9) For the reasons stated above, we are of the opinion that even in the case of a

joint appeal by insurer and owner of offending vehicle if an award has been made against the tort-feasers as well as the insurer even though an appeal filed by the insurer is not competent it may not be dismissed as such. The tort-feaser can proceed with the appeal after the cause-title is suitably amended by deleting the name of the insurer.

13. So far as the relief (b) is concerned, the same is consequential action taken in terms of the award of the Motor Accident Claims Tribunal dated 28th October, 2004, which has not been challenged by the petitioner despite aggrieved being the party in accordance with law and therefore, no case for interference against the proceedings initiated for executing of the lawful award of the Motor Accident Claims Tribunal cannot be entertained.

14 In view of the aforesaid the present writ petition is dismissed. 7-7.2005