

(1995) 08 BOM CK 0019

In the Bombay High Court

Case No : Misc. Civil Application No. 135 of 1990

Kajetan Leo Vaz

APPELLANT

Vs

Jagdish Raghunath Mankar and Another

RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 25
Motor Vehicles Act, 1939 — Section 110

Citation : (1996) ACJ 249 : AIR 1996 Bom 62 : (1996) 1 BomCR 202 : (1995) 97 BOMLR 741 : (1995) 2 MhLj 615

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Advocate : R.G. Bhagwat and D.S. Sawant, for the Appellant; G.S. Hegde, for the Respondent

Judgement

A.V. Savant, J.—Heard Shri Bhagwat for the applicant.

2. This is an application u/s 24 of the Code of Civil Procedure, 1908 for transfer of Misc. Application No. 11 of 1990, pending before the Motor Accident Claims Tribunal, Ratnagiri, to the Motor Accident Claims Tribunal for Greater Bombay, at Bombay for trial. Two points arise for my consideration:--

(i) Whether the Motor Accident Claims Tribunal constituted u/s 110 of the Motor Vehicles Act, 1939 is a "Court Subordinate to the High Court" within the meaning of Section 24 of the Code of Civil Procedure, 1908?

(ii) Whether the balance of convenience is overwhelmingly in favour of proceedings in the Ratnagiri Tribunal being transferred to the Tribunal, at Bombay?

A few facts giving rise to this application for transfer are as under.

3. On the Independence Day -- 15th August, 1989 the applicant was travelling from Goa to Bombay as the second driver of Tempo bearing No. MCY 3566. At

about 5.30p.m., near Kankavali, which was then a part of the erstwhile Ratnagiri District and which is now a part of the newly constituted Sindhudurg District. When the applicant was sitting next to the driver, who was driving the vehicle, the vehicle hit a tree, as a result of which the applicant suffered serious injuries and his left leg has been amputated. The applicant has filed his claim in the year 1990 (the day and month is not available since the same is left blank in the copies produced before this Court and the records and proceedings has not been called for) making a claim of Rs. 9 lacs on different counts. It is true that the applicant received the initial treatment at the Sawantwadi Civil Hospital, followed by the treatment at the Holy Spirit Hospital, at Andheri -- Bombay and then at the K.E.M. Hospital, at Parel, Bombay. It is stated that he is still required to go to the K.E.M. Hospital, at Parel -- Bombay occasionally for some treatment and/or some physical exercises for being able to walk on crutches.

4. The first respondent is the owner of the vehicle and stays at Vasai in District Thane. The second respondent -- The New India Assurance Co. Ltd. has its Head Office at Fort, Bombay. The applicant is now staying at Byculla to facilitate his attending the K.E.M. Hospital, at Parel, for the treatment as mentioned above. It is true that there may be some witnesses from Kankavali to depose either to the accident or in respect of the First Information Report lodged at the Kankavali Police Station. Though there is a Motor Accident Claims Tribunal, at Ratnagiri, Shri Bhagwat appearing for the applicant, states that there is no such Tribunal at Sindhudurg. Hence, cases from both, Ratnagiri and Sindhudurg Districts, arising under the Motor Vehicles Act in respect of the accident claims are entertained by the Motor Accident Claims Tribunal, at Ratnagiri. The distance between Bombay to Ratnagiri is approximately 355 kms. In these circumstances, the applicant prays for transfer of the proceedings pending in the Ratnagiri Tribunal to the Motor Accident Claims Tribunal for Greater Bombay, at Bombay.

5. Section 24 of the Code of Civil Procedure, in so far as it is relevant, reads as under:--

"24. General power of transfer and withdrawal--

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage--

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and--

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) to (5)"

It will be clear that the applicant's case will be governed by Section 24(1)(b) and (ii) of the said Code.

6. It is now well-settled that the Motor Accident Claims Tribunal constituted under the Motor Vehicles Act is a Court subordinate to the High Court within the meaning of the provisions of Section 24 of the Code of Civil Procedure. In the case of *State of Haryana Vs. Smt. Darshana Devi and Others*, , the question was whether the provisions of Order XXXIII of the CPC dealing with suits by paupers or suits by indigent persons applied to proceedings before the Motor Accident Claims Tribunal, which have the trappings of the Civil Court. The Supreme Court approved the decision of the Punjab and Haryana High Court and held that the Court must give the benefit of doubt against levy of a price to enter the temple of justice until one day the whole issue of the validity of profit-making through sale of civil justice, disguised as Court-fee, is fully reviewed by the Court. These observations are to be found in para 5 of the judgment of the Supreme Court at page 856 of the Report.

7. Despite the above said decision, however, it was thought that there was some doubt as to whether the Motor Accident Claims Tribunal was a Court subordinate to the High Court within the meaning of Section 24 of the Code of Civil Procedure. These doubts were set at rest by the Supreme Court in the case of *Bhagwati Devi and Others Vs. I.S. Goel and Others*, . The Supreme Court categorically held that the Motor Accident Claims Tribunal was a Civil Court for the purpose of Section 25, C.P.C. The following observations were made by the Supreme Court while deciding *Bhagwati Devi*'s case:--

"In view of the observations of this Court in *State of Haryana v. Darshana Devi*, we are of the view that the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act is a civil Court for the purposes of Section 25 of the Code of Civil Procedure. We are satisfied that the cases before us are fit cases for being transferred from the file of the Motor Accidents Claims Tribunal, Moradabad to the file of the Motor Accidents Claims Tribunal Delhi. The transfer petitions are accordingly allowed and Compensation Applications Nos. 3 to 15 of 1982 pending before the Motor Accidents Claims Tribunal, Moradabad are transferred to the file of the Motor Accidents Claims Tribunal, Delhi."

8. In view of the above mentioned two decisions of the Supreme Court, the Karnataka High Court held in *Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah, Gulbarga and Another*, , that the Claims Tribunal constituted u/s 110 of the Motor Vehicles Act, 1939 is a Court subordinate to the High Court within the meaning of Section 24, C.P.C. and the High Court can transfer the cases from one Tribunal in the State to another Tribunal u/s 24 of the said Code. The Division Bench presided over by M. N. Venkatachaliah (as he then was) and D. R. Vithal Rao, JJ.,

reviewed the entire position in the light of the two Supreme Court decisions referred to above and held that the Motor Accident Claims Tribunal was a Court subordinate to the High Court within the meaning of and for the purposes of Section 24, C.P.C. Hence, the transfer of cases from one Tribunal in the State to another was permissible. These conclusions are to be found in Para 12 of the judgment at page 213 of the Report, Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah, Gulbarga and Another, . In view of the above, I hold that the Motor Accident Claims Tribunal constituted u/s 110 of the Motor Vehicles Act, 1939 is a Court subordinate to the High Court within the meaning of Section 24, C.P.C. Point No. (i) is, therefore, answered in the affirmative.

9. Turning to the second point regarding the question of the overwhelming balance of convenience in transferring the case to Bombay from Ratnagiri, I may again make a reference to the Judgment of the Karnataka High Court referred to above in Mrs. Noreen R. Srikantaiah's case (supra). In that case, the claim was lodged at Gulbarga, in view of the fact that the claimant widow was suffering from low blood pressure and vertigo, it was thought unfair to require her to travel 400 miles to Gulbarga from her place of residence. This was held to be sufficient ground justifying the transfer of the case from Gulbarga to the Tribunal at Bangalore.

10. As stated earlier, the applicant before me has lost his left leg which has been amputated below the knee. A photograph was produced before me which, prima facie, supported this contention. I am aware that the evidence is yet to be led. The applicant, as also the owner-respondent No. 1, both reside at Vasai in District Thane. However, the applicant has now shifted to Byculla since he is required to attend the K.E.M. Hospital at Parel in connection with his treatment and exercise which he is required to do in order to be able to walk with the help of crutches. The second respondent-New India Assurance Co. Limited has also its Head Office at Bombay. The applicant has received treatment for some time at the Holy Spirit Hospital, Andheri -- Bombay and has thereafter been receiving the treatment at the K.E.M. Hospital, Parel -- Bombay.

11. Under the circumstances, in my view, the convenience of majority of the parties and witnesses whose evidence would be relevant at the trial would justify the transfer of the case from the Ratnagiri Tribunal to the Tribunal, at Bombay. This may result in some inconvenience to some of the witnesses from Kankavali, referred to earlier. But that would be inevitable, having regard to the larger interests of justice of the matter in the peculiar facts and circumstances of the case. In my view, the balance of convenience is overwhelmingly in favour of the case being transferred to Bombay from Ratnagiri.

12. Hence, the application for transfer is allowed. Rule in the Transfer Application is made absolute in terms of prayer (a) of this application. Misc. Application No. 11 of 1990 filed by the applicant before the Motor Accident Claims Tribunal, at Ratnagiri, is hereby transferred to the Motor Accident Claims Tribunal for Greater Bombay, at Bombay.

13. Having regard to the fact that the accident has occurred on the 15th August, 1989, the Tribunal at Bombay is directed to take up the matter for disposal on a priority basis as soon as the records and proceedings are received and dispose it of as expeditiously as possible. Rule is accordingly made absolute. There will, however, be no order as to costs.

Application allowed.