
(1995) 11 MP CK 0041

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No"s. 15 and 16 of 1987

Kishori

APPELLANT

Vs

Tribal Service Co-operative Society Ltd. and Others

RESPONDENT

Date of Decision : 15-11-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110A

Citation : (1996) ACJ 562 : (1996) 85 CompCas 591

Hon'ble Judges : Subhash Balwant Sakrikar, J;Asha Ram Tiwari, J

Bench : Division Bench

Advocate : Subhash Samvatsar, for the Appellant; Ravi Waghmare, and Dandwate, for the Respondent

Final Decision : Allowed

Judgement

A.R. Tiwari, J.—These letters patent appeals, presented under Clause X of the Letters Patent, are directed against the common order dated November 20, 1987, passed by the learned single judge of this court in Miscellaneous Appeal No. 305 of 1983 (Kishori v. Chairman, Tribal Services Co-operative Society Ltd., Sendhwa and others) and Miscellaneous Appeal No. 28 of 1984 (United India Insurance Co. Ltd. v. President, Adim Jati Sewa Sahakari Samiti, Pansemal).

2. Briefly stated, the facts of the case are that on November 23, 1981, 200 bags of chemical fertilizers were being carried for the owner-consignee of the goods, i.e., the claimant (co-operative society) from Sendhwa to Pansemal and that the truck carrying the goods turned turtle near Bamania Naala due to rash and negligent driving of the truck.

3. 125 bags of urea costing Rs. 15,235.33 were destroyed having fallen in the Naala as a result of the aforesaid accident. The truck in question was insured with the insurance company to cover the liability for damage to any property of a third party. The co-operative society filed Claim Case No. 20 of 1982, before the Member, Motor Accidents Claims Tribunal, Mandleshwar, for compensation. The

Tribunal passed the award of Rs. 15,235.33 with interest amounting to Rs. 772.18 restricting the liability of the insurance company to Rs. 2,000 only in terms of the insurance policy. Aggrieved, the owner of the truck filed Miscellaneous Appeal No. 305 of 1983, and the insurance company filed Miscellaneous Appeal No. 28 of 1984. By the common order dated November 20, 1987, the learned single judge dismissed the appeal filed by the owner but allowed the appeal filed by the insurance company and held that it was not liable to pay Rs. 2,000 or any amount and directed that the entire amount of Rs. 16,007 with interest at 12 per cent per annum from the date of the claim petition till realisation was required to be paid by the owner. Aggrieved, the owner has filed these two letters patent appeals, against the order passed in the aforesaid two miscellaneous appeals.

4. We have heard Shri Subhash Samvatsar, learned counsel for the appellant, Shri Ravi Waghmare, learned counsel for respondents Nos. 1 and 2 and Shri Dandwate, learned counsel for respondent No. 4. None appeared for respondent No. 3 (driver).

5. Shri Samvatsar and Shri Dandwate jointly urged that the Tribunal had no jurisdiction to entertain the claim petition and that the Tribunal and the learned single judge committed an error of law in holding that the claim petition was entertainable by the Tribunal. They submitted that u/s 110 of the Motor Vehicles Act, 1939, Motor Accidents Claims Tribunals were constituted for the purpose of adjudicating upon claims for compensation in respect of the accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both. They, thus, contended that the damages alleged in the claim case did not pertain to the property of a third party and as such the Tribunal lacked jurisdiction in entertaining the claim petition and making the award. They also submitted that the learned single judge did not correctly appreciate the expression "third party" and erroneously assumed that the owner of the goods can be supposed to be a "third party". According to them, the conclusion reached by the learned single judge is inconsistent at several places. In support of this contention, they placed reliance on United India Insurance Company Ltd. and Another Vs. K.A.R.N. Janarthanam and Another, , wherein it is held as under :

"Mr. Arunagirinathan, learned counsel for the second respondent, would then state that the petition filed u/s 110A of the Motor Vehicles Act itself was not maintainable on the finding that the goods which had suffered damage are not properties of a third party. His contention is based on Chapter VIII of the Motor Vehicles Act, being confined only in respect of third party risks and no other. This court having held that the goods involved in the petition are not properties of a third party coming within the scope of Section 95(1)(b)(i), in view of Section 110, the Claims Tribunal would have no jurisdiction to entertain such a claim. The Tribunal constituted u/s 110 could only adjudicate upon claims for compensation in respect of damage to any property of a third party so arising.

Therefore, the petition as filed was not maintainable before the Tribunal at Madurai."

6. Faced with this position, Shri Waghmare submitted that respondents Nos. 1 and 2 be granted liberty to resort To the proper remedy in the civil court and for that purpose, the limitation be extended and delay be condoned. Shri Samvatsar and Shri Dandwate submitted that if respondents Nos. 1 and 2 file the civil suit concerning the claim within a period of two months from today, they shall not oppose the same on the question of limitation and the appropriate forum may decide the same on the merits.

7. In view of the aforesaid position we find that these appeals be disposed of in the terms indicated below :

(a) Both the letters patent appeals are allowed and the order dated November 20, 1987, passed by the single Bench and the award passed by the Tribunal in Claim Case No. 20 of 1982 on October 5, 1983, are set aside and the claim petition is rejected as not entertainable and being not within the jurisdiction of the Tribunal.

(b) Respondents Nos. 1 and 2 are granted liberty to file appropriate proceedings before the appropriate forum within a period of two months from the date of this order.

(c) The appropriate forum shall, in the event of such proceedings being instituted within two months from the date of this order, treat the delay as condoned on the ground of prosecution of the claim petition, miscellaneous appeals and then letters patent appeals with due diligence and shall treat the same as within the limitation and shall proceed to decide the same on the merits.

8. With the aforesaid directions, Letters Patent Appeal No. 15 of 1987, as also Letters Patent Appeal No. 16 of 1987, stand allowed, but without any orders as to costs.

9. A copy of this order shall be placed in the records of Letters Patent Appeal No. 16 of 1987 for ready reference.