

(1982) 04 AHC CK 0084
In the Allahabad High Court
Case No : F.A.F.O. No. 367 of 1975

Kripal Singh and Another

APPELLANT

Vs

Mst. Kaila and Others

RESPONDENT

Date of Decision : 08-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 6(1)
Motor Vehicles Act, 1939 — Section 110, 110A, 110B, 110C, 110D
Uttar Pradesh Motor Accidents Claims Tribunal Rules, 1967 — Rule 11, 12, 21

Citation : (1982) ACJ 458 : (1982) AWC 429

Hon'ble Judges : K.N. Singh, J;K.M. Dayal, J

Bench : Division Bench

Advocate : A.K. Banerji and S.M. Jain, for the Appellant; A.K. Saxena, for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) is directed against the award of Motor Vehicles Claims Tribunal (hereinafter referred to as the Tribunal") dated 28th May 1975, awarding a sum of Rs. 30,000/- as compensation to the Respondents.

2. Gopal Singh died in an accident on 14-7-1971. The vehicle involved in the accident was a public carrier bearing number USD 9944, which was owned by Sri Kripal and insured by the New India Insurance Co. The parents of the deceased Smt. Kaila and Ram Kishan filed claim petition before the Tribunal claiming compensation in the sum of Rs. 30,000/- for the death of their son, Gopal Singh. The owner of the truck and insurance company, both, contested the claim petition. After framing of issues December 14, 1973 was fixed for final hearing. On that date case could not be taken up, subsequently, the case was taken up on 19-5-1975 for hearing. On that day the claimants were present before the Tribunal but the owner and the insurer, both were absent. The Tribunal proceeded ex parte and it directed the claimants to give evidence by filing

affidavits, although no order as contemplated by Order 9 Rule 6(1)(a) of the CPC was passed. An application for setting aside the ex parte order was made on behalf of the owner and insurer on that very day but the Tribunal rejected the same. They again made an effort for setting aside the ex parte order on 26-5-1975, but the Tribunal again rejected their application. The Tribunal thereafter gave the award on 28th May 1975, awarding a sum of Rs. 30,000/- to the claimants recoverable from the owner and the insurer placing reliance on the affidavits filed by the claimants.

3. Learned Counsel for the Appellants urged that the Tribunal had no authority in law to record evidence by means of affidavits and, the award given by the Tribunal is illegal. We find merit in the contention. Section 110-A of the Act confers power on the State Government to constitute one or more Motor Accidents Claims Tribunals" for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to, persons arising out of motor vehicles or damages to any property of a third party so arising, or both. Section 110-C of the Act lays down that the Tribunal may, in holding inquiry, follow such summary procedure, subject to rules that may be made in this behalf, as it thinks fit. Sub-section (2) lays down that the Claim Tribunal shall have all the powers of the Civil Court, for the purpose of taking evidence and enforcing the attendance of the witnesses, and for discovery and production of documents and material objects and for other purposes as may be prescribed. Section 111-A confers power on the State Government to make rules for the purpose of carrying into effect the provisions of Section 110 to 110-E including the procedure to be followed by a Claims Tribunal in holding enquiry and also the powers of the Civil Court which may be exercised by the Claims Tribunal. In pursuance of these provisions State Government has framed rules known as the U.P. Motor Accidents Claims Tribunal Rules, 1967. Rule 11 of the said Rules provides that after framing of the issues, the Claim Tribunal shall proceed to record evidence thereon which each party may like to produce. Rule 12 prescribes method for recording of evidence. It lays down that the Claims Tribunal shall examine the party or witnesses and maintain substance of memo of their deposition. Rule 21 makes some provisions of the CPC applicable to the proceedings before the Tribunal. It is pertinent to note that Rule 21 does not make Order XIX of the CPC applicable to proceedings before the Tribunal. A Civil Court is empowered to admit evidence by means of affidavits as it is authorised to do so by Order XIX of the Code of Civil Procedure. Since that provision has not been applied to proceedings before the Tribunal evidence in the shape of affidavits can not be recorded. The provisions of the Motor Vehicles Act, 1919 and the Rules framed thereunder make it amply clear that after the framing of the issues parties are required to produce oral evidence as prescribed by Rule 12. There is no provision under the Motor Vehicles Act or the Rules framed thereunder conferring jurisdiction on the Tribunal to record evidence by means of affidavits.

4. The Claims Tribunal is a creature of the Motor Vehicles Act, 1939, it can

exercise only those powers which are conferred on it by the statute, and cannot derive power from any other Code or statute. Since the Act and the Rules vest no such authority in the Tribunal it has no power to permit evidence by means of affidavit or to give award on the basis of evidence contained in the affidavits. The Tribunal committed error in admitting the evidence by means of affidavits and delivering the award against the Appellant on the basis of evidence contained in those affidavits.

5. We, therefore, allow the appeal, set aside the order of the Tribunal and remand the matter to the Tribunal to decide the claim petition in accordance with law at a very early date. During the pendency of the proceedings before the Tribunal, no proceedings shall be taken for recovery of Rs. 15, 000/-which has been paid to the claimants under the orders of this (court ?). The parties shall bear their own costs.