

(2011) 02 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 279 of 1988 (O and M)

Miss Harbir Kaur and Others

APPELLANT

Vs

Teknow Consultants and Engineers (P) Limited and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 7
Legal Services Authorities Act, 1987 — Section 19(4), 20(4), 22
Motor Vehicles Act, 1939 — Section 95(2)

Citation : (2011) 162 PLR 511 : (2011) 3 RCR(Civil) 310

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeal is by some of the claimants, who were aggrieved against the order of the Lok Adalat passed on 07.11.1987, acting on a plea by the mother that a compensation of Rs. 70,000/- in full quit on all claims was for the benefit of all persons. The Appellants are the children of the deceased namely Amar Singh, who was 40 years of age, stated to be a motor mechanic. The issue of liability was an admitted fact that she had given evidence initially before the Tribunal that her husband was earning Rs. 2,000/- per month and used to give Rs. 1,300/- to Rs. 1,500/- per month for household expenses. There was fairly a large family of daughter, who was a major at that time when the petition was filed, and four sons, who at the time of institution of the petition, were 17, 15, 12 and 8 years of age. Even if it were to be taken that the third claimant namely Devinder Singh had become a major at the time when the order was passed, considering the fact that he was stated to be 17 years of age at the time of institution, the compromise which had been brought about at the instance of the mother is being assailed by her children contending that the mother did not have competence to enter into compromise on behalf of the children, who had become majors and also as regards the minor children without following the procedure established by law.

2. A settlement through a Lok Adalat must be viewed in the context of a compromise and it must answer all the requirements that Order 32 Rule 7 CPC stipulates. If the mother was acting on behalf of the children, the above said provision mandates an affidavit by the guardian mother that it is for the benefit of the minor. If children are represented through a counsel, apart from a certification of the guardian, the counsel must also certify that the compromise is for the benefit of the minor children also. Section 22 of the Legal Services Authority Act details the powers of Lok Adalats and likens it to a Civil Court in its power to summon and receive evidence. Sub-section (2) of the Section also allows Lok Adalat to specify its own procedure for the determination of any dispute coming before it. The hallmark of its style of functioning shall be "to determine and to arrive at a compromise or settlement between the parties to a dispute...." (Section 19(4)). The Lok Adalat shall, while determining any reference under the Act, "act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles" Section 20(4)). Unlike a Civil Court, which does not need to look beyond its own legal reasoning and need not wait for a litigant's nod for its decisions, the Lok Adalat has a duty to see that the litigant consents. When the litigants include minors, it shall not feel burdened that the provisions of Order 32 Rule 7 CPC cast an onerous duty. The said provision is a procedure of fair play; a device for greater circumspection and a reminder to the Court that it assumes a *patria parens* role. Consequently, in situations, where minors figure in the array of parties, the guardian shall expressly declare that the compromise settlement is for the benefit of minors, in the manner required under Order 32 Rule 7 Code of Civil Procedure. If there are majors and *sui juris*, all the parties shall signify consent to settlement. In this case, Appellants 1 and 2 were majors and their consent had not been obtained. As regards the minors, there was no certifications from the guardian herself or through counsel. The Lok Adalat had alone expressed that the compromise seemed beneficial to the minors. This, in my view, is not sufficient.

3. It is not as if the settlement becomes a nullity, if the procedure is not followed. It is only voidable. The Hon'ble Supreme Court held in a 5 member Bench of the Supreme Court in *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, , it is good unless the minor chooses to avoid it. It follows that a decree or order based on the agreement is also good unless the minor chooses to challenge it. That is the position where there is no sanction of the Court. Reading the two provisions merely means this. No next friend or guardian for the suit can enter into an agreement or compromise which will bind the minor unless the Court sanctions it." I will substitute the term "Lok Adalat" wherever the word Court appears. The Lok Adalat's sanction must be a conscious act to the compromise being fair to the minors. The major litigants who were not parties to the settlement and the minors have appealed to this Court and that is a sure method of expression that they do not consent to the award and they are interested in challenging the same.

4. I will hold that the compromise effected on 05.06.1986 is not legally sustainable to bind either the major children or the minor children, who had not subscribed their affirmation to the compromise and they have come on appeal before this Court for assailing the same. I would, therefore, consider the issue of the adequacy of compensation as open to fresh adjudication in so far as the share of the minor children alone are concerned.

5. The wife had given evidence to the effect that her husband was motor mechanic and earning about Rs. 2,000/-. She also stated that he was paying about Rs. 300/- for rent. Though it is not a rule of thumb or universal law, I would understand that the rental for a shop is at least is never more than 10% of the total income. I will take the contribution to the family which the wife has stated as Rs. 1,300/- to Rs. 1,500/- as appropriate and I would take that to be the extent of dependency of the family. I will take the lower of the amount as the extent of dependency of the family excluding the extent that may have to be spent for the husband himself. Having regard to the fact that the deceased was about 40 years of age, I will take the appropriate multiplier as 15 and take the loss of dependency at Rs. 2,34,000/-. The Tribunal while determining the compensation as Rs. 85,000/- has allocated for the share of Gurmail Kaur at Rs. 55,000/- and I will take that to completely satisfy her claim. If the amount were to be deducted, the amount payable for all the children would be Rs. 1,78,000/-. The learned Counsel for the Insurance Company points out that the claimants have sought for an appeal only for an amount of Rs. 1,90,000/- on the whole and, therefore, an assessment for any higher amount may not be appropriate. The Courts invariably have the power to assess a compensation of what is just, if it would mean the amount claimed was less than what the Tribunal awarded. I will, therefore, not take the claim at Rs. 1,90,000/- as fettering the rights of the Court to determine a compensation higher than what was claimed by the parties.

6. The amount which was determined as payable to the Appellants shall attract interest at 6% from the date of petition till date of payment.

7. The learned Counsel for the Insurance Company points out that the policy was taken by paying the basic premium for liability to public risk and the limit of liability as set out in the policy is such amount as was necessary to meet the requirements of Motor Vehicles Act of 1939. As per Section 95(2)(a) of the Motor Vehicles Act, the liability under an Act policy for the Insurance Company is restricted to Rs. 1,50,000/-. The liability already incurred by the insurer shall, therefore, now be enhanced from Rs. 85,000/- as determined in the Lok Adalat to Rs. 1,50,000/- with interest and the amount in excess shall be borne by the owner of the vehicle arrayed as 1st Respondent in the appeal.

8. The appeal is allowed restricting the liability to the insurer as aforesaid.