

(2017) 01 PAT CK 0034

In the Patna High Court

Case No : Miscellaneous Appeal No. 419 of 2013

M/S United India Insurance Company Limited

APPELLANT

Vs

Most. Mangli Devi

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Bihar Motor Vehicle Rules, 1992 — Rule 243
Motor Vehicles Act, 1988 — Section 168

Citation : (2017) 2 BLJud 2 : (2017) 2 PLJR 9

Hon'ble Judges : Hemant Gupta, ACJ. and Sudhir Singh, J.

Bench : Division Bench

Advocate : Mr. Durgesh Kumar Singh, Advocate, for the Appellant; Mr. Anjani Kumar, AAG-4 and Mr. Shailendra Kumar, AC to AAG-4, for the Respondents; Mr. Pramod Kumar, Advocate, for the Respondent/Claimant

Final Decision : Allowed

Judgement

1. The matter has been placed before this Court in terms of an order passed by the learned Single Bench of this Court on 29.06.2016 wherein, it was noticed that an award has to be prepared in terms of Section 168 of the Motor Vehicles Act, 1988 (for short "the Act") and a copy of which is required to be served within fifteen days, however, no period has been assigned for the purpose of preparation of award under the Bihar Motor Vehicle Rules, 1992. The Rule 243 of the Bihar Motor Vehicle Rules, 1992 deals with judgment but not an award. Therefore, the matter was placed before this court to clarify the provisions.

2. The practise within the jurisdiction of this Court is that the Tribunal records its judgment and then calls upon the claimant to furnish the court fee and on furnishing of court fee, the Tribunal prepares an award which gives right of appeal to the aggrieved parties and also a right to the claimant to seek execution of the award.

3. On 13.01.2017, when the matter came up for hearing before the Division Bench, the Court framed two questions which required determination but after

hearing learned counsel for the parties, we re-frame the questions, which require the adjudication. The questions are:-

(i) Whether in terms of Section 168, the reasons recorded by the Claims Tribunal for deciding the claim application itself is to be treated as an award and whether Rule 243 of the Bihar Motor Vehicles Rules, 1992 defining judgment would, in fact, mean an award.

(ii) Whether the fee payable on the claim application in terms of Rule 227 should be read down to mean that the fee payable on the claim application exceeding ten thousand rupees shall be payable by the tortfeasor not by the victim.

4. To examine the aforesaid two questions, certain statutory provisions need to be reproduced.

"Section 168: Award of the Claims Tribunal. ? (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be :

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claims (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

Section 169. Procedure and powers of Claims Tribunals. - (1) In holding any inquiry under Section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be

deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

Rule 227: Fees.-(1) An application for compensation under Rule 226, where a claim is for an amount not exceeding Rs. 9999 shall be accompanied by an amount of ten rupees.

Provided that if the person making the application succeeds he shall be liable to pay by way of fee an amount equal to the full fee leviable on the amount at which the claim is awarded by the Tribunal according to the following scale:-

(i) If the amount at which the claim is awarded exceeds one hundred rupees, Ten rupees.

(ii) If the amount of which the claim is awarded exceeds one hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees, up to one thousand rupees.-Re.1.

(iii) If amount of which the claim is awarded exceeds one thousand rupees, for every one and twenty hundred rupees or part thereof in excess of five rupees. One thousand rupees, upto five hundred rupees.-Six rupees and twenty five paise.

(2) An application or compensation under rule 226 in respect of a claim of an amount exceeding Rs. 9999 shall be accompanied by an amount equal to one-half of the fee leviable on the amount at which the claim is valued, in the application according to the following scales:-

(i) If the amount at which the, claim is valued does not exceed ten thousand-Rs.750/-.

(ii) If the amount at which the claim valued exceeds ten thousand rupees, for every five hundred rupees, or part thereof in excess of ten thousand rupees, upto twenty thousand rupees.-Thirty five rupees.

(iii) If the amount at which claim is valued exceeds twenty thousand rupees, for every one thousand rupees, or part thereof in excess of twenty thousand rupees, up to thirty thousand-Forty five rupees.

(iv) If the amount at which the claim is valued exceeds fifty thousand rupees for every five thousand rupees, or part thereof, in excess of fifty thousand rupees, upto one lakh of rupees.-Eighty rupees.

(v) If the amount at which the claim is valued exceeds one lakh rupees for every ten thousand rupees, or part thereof, in excess of one lakh of rupees, subject to a maximum fee of fifteen thousand rupees.-One hundred rupees.

Provided that if the person making the application succeeds, he shall be liable to make good the deficit if any, between the full fee payable on the amount at which the claim is awarded by the Tribunal according to the said scale and the fee already paid by him. (3) The fees payable under this rule shall be paid in the form of Court fee stamps.

Rule 228: The Claims Tribunal may exercise all the powers of a Civil Court save in so far as the same are not inconsistent with the provisions of the Motor Vehicles Act, 1988 and the rules made thereunder. Rule: 243: Judgment.-The Claims Tribunal, in passing orders, shall record concisely in a judgment the finding on each of the issue framed and its reasons for such finding.

Rule 244: Application of Code of Civil Procedure.-In so far as these rules make no provision or make in sufficient provision, the Claims Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 for the trial of suits.

Rule 245: Savings. - Notwithstanding anything contained in these rules (a) in the case of claim under Section 140 and in the case of any other claim not exceeding an amount of Rs. 10,000/-, the Claims Tribunal may, at its discretion, after hearing the arguments of the parties, or of their legal practitioners if allowed under Rule 231 and after examining the documents, and affidavits accompanying the application for compensation decide the claim by recording a concise judgment and, (b) in case of a claim exceeding an amount of Rs. 10,000/- but not exceeding Rs. 25000/- the Claims Tribunal may, at its direction, follow the provisions of Order XIX of the Civil Procedure Code:

Provided that in case where cross-examination of the deponent who has filed an affidavit is permitted is permitted by it the Claims Tribunal shall follow the procedure prescribed in rule 30 of the said code."

(emphasis supplied)

5. The Motor Vehicle Accident Claims Tribunal has been established for providing speedy remedy to mitigate the hardship suffered by the family of the victim on account of unfortunate accident. The victim of an accident earlier had to claim amount of compensation from the tortfeasor by invoking the jurisdiction of the Civil Court. The said Tribunals were constituted for deciding the right of the victim to claim compensation which was then a time consuming affair before the Civil Court prior to amendment in the Motor Vehicles Act, 1939, by the Central Act No. 100 of 1956.

6. One of the objects of introducing Central Bill No. 57 of 1955 which led to Central Act No. 100 of 1956 is the existing difficulties experienced by a person of limited means in preferring claims on account of injury caused by Motor vehicles. The relevant extract from the objects and reasons to introduce the Bill reads as under:

"The State Governments are being empowered to set up tribunals to determine and award damages in cases of accidents involving the death of, or bodily injury

to, persons arising out of the use of motor vehicles and also to adjudicate on the liability of the insurer in respect of payment of damages awarded. At present, a court decree has to be obtained before the obligation of an insurance company to meet claims can be enforced. The amendment is designed to remove the existing difficulty experienced by persons of limited means in preferring claims on account of injury or death caused by motor vehicles."

7. Thus, Section 110-A was inserted giving a right to apply for compensation arising out of an accident as specified in Sub-Section (1) of Section 110. In terms of provisions of Section 110-A of Motor Vehicles Act, 1939, Bihar Motor Vehicles Accidents Claims Tribunals Rules, 1961 was published which has not drawn distinction between "judgment" and "award". In respect of fee, on such application form, it was required to be paid Rs. 10/- which could also be exempted in terms of Sub Rule (2) of the said Rule by the Tribunal. Rules 19 & 22 of the said Rules reads as under:

19. Judgment and award of compensation ? (1) The Claims Tribunal, in passing orders, shall record concisely in a judgment the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer and also the person or persons to whom compensation shall be paid.

xxx xxx xxx

22. Fees- (1) Every application under Sub-section (1) of Section 110-A of the Act, for payment of compensation, shall be accompanied by a fee of rupees ten in the form of court-fee stamps.

(2) The Claims Tribunal may, in its discretion, exempt a party from the payment of a fee prescribed under Sub-rule (1).

8. A Full Bench of this Court in a judgment reported as AIR 1990 Patna 49 (Anirudh Prasad Ambasta v. State) while considering the constitution of Claims Tribunal and appointment of Presiding Officer has examined the purpose of establishing Tribunal and held that they are meant for expeditious disposal of the claim applications filed by the victims. Hon"ble Justice S.B.Sinha, as he then was of this court, observed as under:

"28. Prior to insertion of Section 110 and 110F of the Motor Vehicles Act, 1939, a suit claiming damages for injuries arising out of an accident was maintainable. With a view to provide for a speedy and cheap remedy, the Parliament in its wisdom inserted Sections 110 and 110F in the Motor Vehicles Act, 1939 by Section 80 of the Act 100 of 1956 which came into force w.e.f. 16-02-1957. As noticed hereinbefore, the purport and object of the said legislation was to provide for not only a speedy but also a cheap remedy in respect of claims arising out of accidents involving the death of, or bodily injury to persons or damage to property of any third party, arising out of use of any motor vehicle.

Prior to the said amendment, in a civil suit for damages, ad valorem court-fees

were required to be paid. However, by reason of the said amendment a self-contained code was provided and to provide a new forum, namely, Claims Tribunal as also for lightening the financial burden of the claimant who can now seek compensation through an application without payment of ad valorem court-fees. Reference in this connection may be made to AIR 1973 Orissa 33 (Oriental F. and G. Ins. Co. v. Kamal Kamini) and in AIR 1976 SC 237 (New India Insurance Co. v. Shanti Misra)".

9. The Motor Vehicles Act, 1939 has since been replaced by Motor Vehicles Act, 1988 (for short "the 1988 Act") and that the provisions of Section 168 and Section 169 are *pari materia* with the provisions of Sections 110-A and 110-B inserted in the Motor Vehicles Act, 1939 by Central Act No. 100 of 1956. However, in the Rules framed under the 1988 Act, the State has imposed fee on the claim applications and also deleted the word "award" from the rules notified under the 1988 Act.

10. We find that the entire purport and object of creating Claims Tribunal was to provide a forum for the persons of limited means for preferring claims on account of injury or death caused by the Motor Vehicles. The procedure before the Tribunal is to provide an opportunity of hearing, to hold an enquiry and then to make an award. It is not expected to have a full-fledged trial as is before the Civil Court, as the very purpose of establishing Claims Tribunal is to provide speedy and cheap remedy to the victims or their families by way of summary proceedings.

11. Section 169 of the 1988 Act contemplates that an enquiry under Section 168 subject to rules may be made as per the said summary procedure as it thinks fit. Thus, the mandate of the statute is to provide a summary procedure. However, to regulate the summary procedure, the rules can be framed but not under the guise of rules, the procedure before the Tribunal is treated to be as one of the trial/proceeding before the Civil Court.

12. Full Bench of Punjab and Haryana High Court in a judgment reported as AIR 1982 P&H 407 (Jai Singh and Anr. v. Col. N.A. Subramaniam and Anr.) has held that the Tribunal has all the trapping of a Court and the proceedings before it closely resemble to the proceedings in a Civil Court, but the provisions of the Code of Civil Procedure have not been purposely made applicable to the Tribunal. The Court held as under:

"Once having overcome the difficulty which, according to the learned counsel for the appellants, was created by section 110-C and Rule 20, there can be no gainsaying that vast power exists in the Tribunal to determine its own procedure in dealing with a claims application. The Tribunal has all the trapping of a Court and the proceedings before it closely resemble to the proceedings in a Civil Court. Moreover it is quite evident that the Legislature purposely did not make all the provisions of the Code of Civil Procedure applicable to the proceedings before the Tribunal, which are of a summary nature, as the whole intent of the

Legislature was to ensure a speedy disposal of the claims applications filed by the injured persons or the legal ? representatives of the deceased. Under Section 110-C, the Tribunal is empowered to evolve its own procedure and for the purpose of dealing with a claims."

13. The Hon"ble Supreme Court in a judgment reported as (2010) 8 SCC 591 (Bimlesh v. New India Assurance Co. Ltd.), held that the Code of Civil Procedure is not applicable to the proceedings before the Claims Tribunal and the procedure before the Tribunal is summary. The Court held as under:

"Section 169 makes a provision that the Claims Tribunal shall follow the summary procedure subject to any rules that may be made in this behalf. The Code of Civil Procedure, 1908 is not applicable to the proceedings before the Claims Tribunal except to the extent provided in sub-section (2) of Section 169 and the Rules. The whole object of summary procedure is to ensure that the claim application is heard and decided by the Claims Tribunal expeditiously.

14. In a judgment reported as 1996 (2) PLJR 850 (Oriental Fire Insurance Company v. Smt. Saroj Gupta), the Learned Single Judge of this Court held as under:

"4..... It is well known that monetary compensation cannot be adequate and equal for loss of life or even permanent disability. In that view of the matter, whatever meager amount is permissible under the statute must reach the victim"s family without any loss of time when the compensation is sought for before the court. The statute has taken care of the sufferings and pains of the deceased"s family and, as such, a summary proceeding has been provided for deciding the claim of the claimants. Even though the persons who have suffered injuries and/or met with an accident are legally entitled to claim, damages under the law of "Torts" by initiating a regular suit, in order to avoid mental harassment and monetary loss the summary procedure has been prescribed under the statute which must be kept in view by the court concerned while deciding such claim.

15. Rule 239 in fact shows that the Tribunal is expected to make a brief memorandum of the substance of the evidence of every witness. The Tribunal can conduct local inspection and summary examination as well. Such provisions in fact show that the Tribunals are not to follow the procedure prescribed by the Code of Civil Procedure which is to be followed in deciding a case before the Civil Court. Section 168 of the Act prescribes, as to what the Tribunal has to do. The Tribunal is required to give an opportunity of hearing, conduct an inquiry and then give award. There is no provision of giving judgment as is defined by the Code of Civil Procedure.

16. Rule 243 defines the expression "Judgment" to mean that the Claims Tribunal, in passing orders, shall record concisely in a judgment the finding on each of the issue framed and its reasons for such finding. The flexibility is given to the Tribunal to devise its procedure which is in consonance with the principles

of equity, just and conscience. The Act contemplates announcing of an award and not a judgment, as is delivered by the Civil Court which passes a decree consequent to the judgment.

17. Thus, in view of the statutory provisions and the aforesaid judgments, we find that Tribunal is not bound by the procedure which is applicable before the Civil Court as the purpose of establishing the Tribunal is to provide Speedy remedy to the victims and their families.

18. The expression "Award" is not defined either in the Act or the Rules framed by the State Government. Therefore, we had to examine the meaning given to such words in the usage or in dictionaries. In the Book "The Major Law Lexicon" authored by P. Ramanatha Aiyar (4th Edition 2010), it is stated that an "award" is a judicial order given as payment or compensation, such as damages.

19. As per The New Lexicon Webster's Dictionary (1990 Edition), "award" means a judicial decision. "Award" is explained in Black's Law Dictionary, Fourth Edition, at Page 174 as ? "to grant", concede, of adjudge to; to give or assign by sentence of judicial determinationthe decision or determination rendered by arbitrators or commissioners, or other private or extra judicial deciders, upon a controversy submitted to them; also the writing or document embodying such decision.

20. Thus an award, as generally understood, is a document incorporating the adjudication or determination of a matter in dispute by a person competent to adjudicate or determine the dispute.

21. The Hon"ble Supreme Court in a judgment reported as (2006) 12 SCC 642 Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd. while examining the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, held that the expression "award" has a distinct connotation. It envisages a binding decision of a judicial or a quasi-judicial authority. It may be an arbitral award. It may also be an award under Section 10-A of the Industrial Disputes Act, 1947, or one made by the Labour Court or an Industrial Tribunal. It was held as under:-

"33. It is difficult to accept the submission of the learned Senior Counsel that sub-section (3) of Section 22 of SICA deals only with contractual obligations. The expression "award, standing orders or other instruments" in our considered view does not refer only to a contractual obligation which is binding on the company, but also liabilities thereunder.

34. The expression "award" has a distinct connotation. It envisages a binding decision of a judicial or a quasi-judicial authority. It may be an arbitral award. It may also be an award under Section 10-A of the Industrial Disputes Act, 1947, or one made by the Labour Court or an Industrial Tribunal. An award of a quasi-judicial or judicial authority may provide for a binding decision on the company.

22. The Rule 243 contemplates that the Claims Tribunal shall record concisely in a judgment the finding on each of the issues framed and its reasons for such

finding. Such reasons are not the same as is required by the Civil Court but a memorandum of summary of the proceedings to help the Appellate Court to examine the decision making process. Finding on the issues by the Tribunal is not a judgment but an award which itself becomes appealable. No separate award is required to be drawn up, such as a decree by the Civil Court, for the purposes of enabling the aggrieved party to file an appeal.

23. We find that the distinction between the "Judgment" and the "Award" drawn by the practices is not tenable. Section 168 of the Act contemplates an "award" determining amount of compensation. It is not separate from a "judgment". The formal reasons for determining amount of compensation may be called "judgment" or an "award" but it is the said judgment alone which is an award and executable as such.

24. The "award" announced by the Tribunal is itself appealable, therefore, it cannot be said that after announcing the judgment a separate award has to be drawn, as the reasons for the grant of compensation, in terms of Section 168, has to be recorded in the award itself. Therefore, we find that the meaning assigned to the expression "judgment" in Rule 243 is in fact has to be read down to mean the word "award". Therefore, the word "award" and "judgment" are held to be interchangeable words. The question No. 1 framed above is answered in the manner discussed.

25. Rule 227 provides a court fee of Rupees ten, if the amount of compensation does not exceed Rs. 9999/-. However, the proviso states that in the event if the person making an application succeeds to more compensation than the amount so fixed, the amount of compensation, he shall be liable to pay by way of fee an amount equal to the full fee leviable. Sub Rule (2) of Rule 227 states that if an application is in respect of the compensation which is more than Rs. 9999/-, the person shall pay court fee as per the rates mentioned therein. We find that the Rule 227 defeats the object of constitution of the Claims Tribunal.

26. The object of inserting mechanism of grant of compensation by the Claims Tribunal is to "remove the existing difficulties of persons of limited means". A helpless dependent of the deceased is called upon to deposit the court fee is putting an obstacle in the very purpose for which the Tribunals were established. It defeats the spirit of the law.

27. Rule 227 provides for payment of fee if the claim is allowed as per the said Rule. If the claim is allowed, the victim is entitled to the compensation, which is required to be deposited within 30 days {Section 169(3)}, such amount of compensation shall include the amount of the costs of the proceedings which include the court fee and other expenses including lawyers fee be paid by the tortfeasor as well. Therefore, it is fair and reasonable that the fee, which is contemplated under Rule 227, is directed to be deposited and/or paid by the tortfeasor, which includes driver, owner and, in case of contract of insurance, the insurance company. It will avoid the payment of fee by the claimant first and

then to recover from the tortfeasor. Such procedure will be fair and just as the State would get the revenue and the claimants their compensation, which any case is payable by the tortfeasor. Therefore, calling upon the claimants to pay the court fee in terms of the Rules is not warranted keeping in view the object of the 1988 Act.

28. Though the provision itself can be said to be untenable, but to maintain the legality and also to provide solace to the victims, it is ordered that the amount of court fee payable in terms of Rule 227 shall be added in the memo of cost to be prepared and shall be recoverable from the tortfeasor. Once the amount of compensation and the cost is deposited, the amount of cost will stand appropriated to the State and the remaining amount shall be paid to the claimants, but calling upon the claimants at the first instance and then to recover from the tortfeasor actually multiplies the burden of the claimants, that will be the just and equitable reading of Rule 227.

29. Thus, it is held that the expression "judgment" and "award" are interchangeable and that the Tribunal shall announce award on completion of inquiry, which shall be executable and appealable. The amount of court fee shall be affixed by the tortfeasor, which would be recoverable as arrears of land revenue along with the amount of compensation in terms of Section 174 of the 1988 Act.

30. Now the appeal be posted for hearing before the Learned Single Judge for decision in accordance with law.