

(1979) 10 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeals No's. 30 to 32 of 1975

National Carriers and Others

APPELLANT

Vs

M.J. Stone and Others

RESPONDENT

Date of Decision : 31-10-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 2, Order 23 Rule 3, Order 32 Rule 1, Order 32 Rule 14
Himachal Pradesh Motor Accidents Claims Tribunals Rules, 1960 — Rule 20
Motor Vehicles Act, 1939 — Section 110B, 111A

Citation : (1979) 8 ILR HP 560

Hon'ble Judges : T.U. Mehta, C.J.; Vyom Prakash, J

Bench : Division Bench

Advocate : Chhabil Dass, for the Appellant; K.D. Sood and Kamlesh Sharma, for the Respondent

Judgement

T.U. Mehta, C.J.—These three appeals are preferred against the judgment recorded by a learned single Judge of this Court in F.A.O. Nos. 25, 27 and 28 of 1972 on March 19, 1975, remanding the cases to the Motor Accidents Claims Tribunal for ascertaining the amount. of compensation payable to the claimants who are some of the Respondents in these three appeals.

2. Short facts of the case which form the background of these appeals can be stated as under.

3. The claims made by the claimants in these matters had arisen out of the motor accident which took place on 20th December, 1968, at about 2.50 P.M. at a place which is situated on Hindustan Tibet Road at a distance of about three miles from Wangtu bridge towards Kalpa side. It is found from the record of the case that a petrol tanker bearing No. HRA 1807 belonging to the Appellants Messrs National Carriers was going towards Kalpa side and is said to have been driven by its driver one Shri Gajender Singh on the wrong side, i.e. on the right hand side which was tow the bank of the river Sutlej. While that tanker was

negotiating a curve, one military truck bearing No. HC- 15455 came from the opposite direction and dashed against this petrol tanker. Case of the present Appellants is that the petrol- tanker was stationary at the time of the collision. This controversy, however, is not relevant for the purpose of these appeals at this stage.

4. The facts show that as a result of this collision, the above referred military truck capsized on the right hand side of the road which was abutting on the Sutlej river bank which is situated deep by several hundred feet. The military truck was occupied by five persons, including its driver. These five persons were Mr. J.G. Stone, Mr. Krishan Lal, Mr. Sudesh Kumar, Mr. Raghbir Singh and the driver Mr. Kailash Yadav. It is in evidence that as a result of this accident all the five persons occupying the said military truck died and their dead bodies could not be recovered.

5. The heirs of the deceased thereafter filed their claims before the Tribunal. In these proceedings, the present Appellants who are Messrs National Carriers and Messrs Oriental Fire and General Insurance Company Limited were joined as parties. Even the Union of India, which owned the military truck, and which capsized, was joined as a party. The case of the claimants was against the present Appellants as well as against the Union of India, because, according to them, drivers of both of them were negligent.

6. During the course of the proceedings before the Claims Tribunal, however, the claimants seem to have arrived at some agreement with regard to the claim against the present Appellants, namely, M/s National Carriers and M/s Oriental Fire and General Insurance Company which had insured the truck under the provisions of the Motor Vehicles Act. This compromise is evidenced not by any written document but by the statements made by the concerned parties. According to these statements, the heirs of deceased J.G. Stone were to receive the total compensation of Rs. 5,000/- while the heirs of deceased Krishan Lal were to receive the amount of Rs. 7,500/- and the heirs of the third deceased Sudesh Kumar were also to receive the same amount. The statements made by the concerned parties were that the amounts were to be paid ex gratia on the next date of the hearing, and that the settlement was only with regard to the liability of the present Appellants. It was specifically mentioned in the statements that the claim of the claimants against the Union of India was remaining intact and was not affected by the settlement.

7. These statements were made by the concerned parties on 6th April, 1972, on which date the evidence of the claimants was declared over. After these statements were recorded, the cases were adjourned to 28th April, 1972 on which date no evidence was offered by any of the parties and, therefore, the arguments were heard.

8. The Claims Tribunal came to the conclusion that no negligence on the part of the driver of the military truck belonging to the Government of India was proved.

The Claims Tribunal, therefore, did not make any award against the Union of India. However, so far as the present Appellants are concerned, the Claims Tribunal made the award of the amounts mentioned in the settlement as evidenced by the statements of the parties made on 6-4-1972.

9. Against this award of the Claims Tribunal the claimants came in appeal before this Court contending that the Claims Tribunal Was wrong in holding that the Union of India was not liable to pay compensation. They further contended that the Claims Tribunal was also wrong in giving the award according to the terms of the settlement without ascertaining whether the settlement was in the interest of minors or not. These appeals were registered in this Court as F.A.O. Nos. 25, 27 and 2 of 1972, and it is therein that the learned single Judge has recorded a common judgment in all these matters.

10. The learned single Judge has by his judgment confirmed the finding of the Tribunal that the claimants have failed to prove that the driver of the military truck belonging to the Government was in any manner negligent. However, the learned single Judge further held that though the provisions contained in Order 32, Rule 7, Code of Civil Procedure, which con template that before allowing a decree to be passed in terms of compromise where minors are concerned, the court should ascertain whether the compromise was in the interest of minors or not, do not specifically apply to the proceedings before a Claims Tribunal, the Tribunal was bound on principle of equity, justice and good conscience to apply these provisions contained in Order 32, Rule 7, CPC to safeguard the interests of the minors. The learned single Judge, therefore, allowed the appeals on that ground, set aside the decision of the Tribunal and remanded all tile cases to the Tribunal for ascertaining the amount of compensation payable to the claimants. In effect, the decision of the learned single Judge amounts to saying that the Tribunal should ascertain the amount of compensation which is to be paid by the present Appellants but not by the Union of India.

11. The present Appellants feeling aggrieved by this order of the learned single Judge have preferred these Letters Patent Appeals. Tile Appellants in these appeals have raised the following main contentions:

(1) The learned single Judge was wrong in holding that the principles contained in Order 32, Rule 7, Code of Civil Procedure. apply to the proceedings before the Claims Tribunal, not only because the Tribunal is not a court but also because the rules framed u/s 111-A of Motor Vehicles Act, 1939, do not provide specifically for tile application of the provisions under Order 32, Rule 7.

(2) Even if it is held that tile principles contained in Order 32, Rule 7 apply to tile claim proceedings under the Motor Vehicles Act, it should be held that these principles have been substantially complied with because the Tribunal has passed the award only after taking into consideration tile statements made by the claimants that the settlement Was in the interest of the minors.

(3) If it is eventually found that tile matter should be remanded to tile Tribunal,

tile remand order should state that the Tribunal should give opportunity to the present Appellants to lead their evidence not only to rebut the claimants' evidence but also to show that negligence was committed by the military truck belonging to the Union of India. In this connection it was contended that since there was a settlement between the Appellants on the one and the claimants on the other and since claimants after this settlement had no further claim against the present Appellants, the dispute which survived before the Tribunal was between the claimants on the one hand and the Union of India on the other hand, therefore, relying upon the validity of the settlement the present Appellants did not take any further interest in the proceedings after tile date of the settlement and hence could not adduce any evidence either to rebut the evidence produced by the claimants or to prove that the driver of" the military truck was negligent in driving his vehicle.

(4) It was further contended that in any event the settlement which was arrived at on 6-4-1972 was binding on the claimants who Were major because the advantage of declaring this settlement void would be available only to the minors and not to the major party even under the provisions of Order 32, Rule 7.

12. So far as the first contention is concerned, the question to be decided is whether the provisions of Order 32, Rule 7 of the CPC are made specifically applicable to the proceedings before the Claims Tribunal or not. In this connection, we find that in exercise of the powers conferred by Section 111-A of the Motor Vehicles Act, 1939, the Lieutenant Governor, Himachal Pradesh, has framed rules by notification, dated 9th November, 1960. These rules are called Himachal Pradesh Motor Accidents Claims Tribunals Rules, 1960. Rule 20 of these rules specifies the provisions of the CPC which are made specifically applicable to the proceedings before Claims Tribunal. This Rule 20 is in the following terms:

20. CPC to apply in certain cases

The following provisions of the First Schedule to the Code of Civil Procedure, 1908 shall so far as may be apply to proceedings before the Claims Tribunals, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10, Order XVI, Rules 2 to 21; Order XVII and Order XXIII, Rules 1 to 3.

From this rule it is evident that rules 1 to 3 of Order 23 of the Code of Civil Procedure. are specifically made applicable to the proceedings before Claims Tribunal. Order 23 of the CPC is with regard to the withdrawal and adjustments of suits. Rule 1 thereof, as it is found at present, says that at anytime after the institution of a suit the Plaintiff may as against all or any of the Defendants abandon his suit or abandon a part of hi claim. This provision is, however, governed by a proviso which in the following terms:

Provided that where the Plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the court.

It is apparent by reference to the settlement as evidenced through the statements made by the parties before the Tribunal that the claimants have abandoned not only a part of their claim, but also have abandoned their claim with regard to that part against all the parties, namely, the present Appellants. Under the circumstances, the above quoted proviso would be applicable to the facts of the case as at present. However, Rule 1 of Order 23, as found at present in the Code of Civil Procedure., was substituted by Code of Civil Procedure. Amendment Act No. 104 of 1976 and, therefore, this proviso was not available at the time when the settlement was made between the parties in the year 1972. Order 23, Rule 1 which was in force in the Code of Civil Procedure. at the relevant time did not contain any provisions similar to the above quoted proviso, and there fore, it cannot be said that Order 32 Rule 7 was made specifically applicable to the claims proceedings at the time when tile settlement was arrived at between the parties.

13. In our opinion, however, this would not mean that the principles embodied in Order 32, Rule 7 would not apply to the claim proceedings under Motor Vehicles Act. The rule embodied in Order 32, Rule 7, Code of Civil Procedure. is based on sound equitable principles which require that whenever the interest of a minor is involved in any judicial proceeding, the Presiding authority, who is expected to settle the dispute, should stand in a quasi-tutelary position with regard to the concerned minor and see that minor's interest is not jeopardised. This would be so even if the minor is represented in the proceeding by a natural guardian, because it some times happens that even the natural guardians are not very much alive to the interest of the minors at the time of arriving at a settlement.

14. So far as the Claims Tribunal is concerned, we find that this duty to safeguard the interest of the minors is greater in view of the specific provisions contained in Section 110-B of the Motor Vehicles Act which says that tile Claims Tribunal should make an award determining the amount of compensation which appears to it "to be just". Thus, the Motor Vehicles Act itself casts a duty on the Tribunal to give only that award which is "just". This statutory duty of the Tribunal to look to the justness of the award would obviously be greater in cases where the interest of a minor is involved. Under the circumstances, we agree with the learned single judge that even though the provisions conained in Order 32, Rule 7 arc not specifically applicable to the facts of the case, the principles contained in that rule would be applicable on the principle of equity, justice and good conscience.

15. It was then contended by Shri Chhabil Dass, the learned Advocate of the Appellants, that even if it is believed that the principles contained in Order 32, Rule 7, Code of Civil Procedure. are applicable, the technical requirement of Order 32, Rule 7 should not be rigidly enforced, and what this Court should see is whether these principles have been substantially complied with by the Tribunal or not. It was pointed out that all tile parties concerned have made a statement that the settlement was in the interest of minors and since the Tribunal has given

tile award on basis of these statements it must be presumed that the Tribunal passed the award only after it Was satisfied that the awards Were in the interest of the minors. After perusing the proceedings before the Tribunal, we find that this contention is not acceptable. The judgments recorded by the Tribunal clearly show that the learned Judge of the Tribunal has passed the award with regard to the different amounts merely of the basis of the settlement. It is undoubtedly true that the parties who made these statements have mentioned that the settlement was in the interest of the minors. But it was the duty of the learned Judge of the Tribunal to apply his mind to the probable amount of compensation which could be awarded in law having regard to the facts and circumstances of the case, and then to find whether the amounts of settlements were in the interest of timinors or not. Apparently, the Tribunal has not approached the question from this angle ? and has merely passed the award on tile strength of a solitary fact that the settlement for awarding particular amounts was arrived at between tile parties. In our opinion, therefore, it cannot be said that the principles contained in Order 32: Rule 7 have been substantially complied with.

16. The next contention was that ever" if it is believed that the learned single Judge was justified in remanding the cases back to the Tribunal, he should have passed an order giving opportunity to the present Appellants to lead their evidence to rebut the claim put forward by the claimants as well as to show that the accident was as a result of the negligence of the military truck and not of the driver of the petrol tanker. We find good deal of substance in this contention because it is clear from the proceedings that after the claimants" evidence was over on 6-4-1972, the settlement in question Was arrived at and as per this settlement no dispute remained as between the claimants and the present Appellants. The dispute which thereafter remained to be investigated was only between tile claimants and the Government of India and, therefore, it is obvious that the present Appellants had absolutely no reason to take further interest in the proceedings.

Now, if tile settlement which is arrived at is found to be bad so far as the minors? interest is concerned, then the appellants, who relying upon that settlement, did not adctuce any further evidence, must be given proper opportunity to lead their evide We, therefore, propose to give such opportunity to the appellants as stated in the final order, which we propose to pass hereafter.

17. The last contention Was that even if it is believed that under the principles contained in Order 32, Rule 7, Code of Civil Procedure. the settlement as between the claimants and the present Appellants should be treated as void on account of the fact that the learned Judge of the Tribunal had not applied his mind to the question whether the said settlement was in tile interest of the minors or not, the whole of that settlement cannot be considered void, because the advantage which the minors would be entitled to have under Order 32, Rule 7 could not be availed of by the claimants who were at that time major in age.

18. In this connection we find that the observations of the learned single Judge

that the settlement would be void ab initio so far as the minors' interest is concerned and voidable so far as the interests of the major claimants is concerned, is not borne out by the decisions of the Supreme Court to which we shall presently make a reference.

19. It may be mentioned here that under the provisions contained in Sub-rule (2) of Rule 7 of Order 32, Code of Civil Procedure., any agreement which does not comply with the provisions contained in Sub-rule (1) of Rule 7, and which is entered into without leave of the Court, is voidable against all parties other than the minor. According to this sub-rule, therefore the, agreement which is in breach of the provisions contained in Rule 7 is voidable but not void so far as the minors' interest is concerned. The position, therefore, would be that these agreements would be legally enforceable so long as they are not avoided by or at the instance of the minor. Such a view is taken by the Supreme Court in two decisions, namely, in *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, and *Kaushalya Devi and Others Vs. Baijnath Sayal and Others*, . In *Bishundeo's* case the Supreme Court had 1 down that Order 32, Rule 7 read as a whole clearly means that no next friend or guardian for the suit can enter into agreement or compromise which will bind the minor unless the court sanctions it, and that a compromise without leave of court and a decree passed thereon is not a nullity but is merely at the option of the minor. In *Kaushalya Devi's* case, while interpreting Order 32, Rule 7 the Supreme Court has observed that what this rule really means is that the impugned agreement can be avoided by the minor against the parties who are major and that it cannot be avoided by the parties who are major against the minor. The Supreme Court has further held that such agreements are voidable and not void.

20. It is thus evident from the view taken by the Supreme Court as regards the interpretation of Order 32, Rule 7 that such agreements are not void ab initio, and that they can be avoided only by the minor or minors and not by majors. Under the circumstances, only those claimants who are minors can claim that the terms of this settlement are void so far as their interest is concerned. However, a similar plea cannot be advanced by the claimants who had already attained the age of majority at the time of this settlement.

21. *Shri K.D. Sud*, who appeared on behalf of the claimants, contended that the amounts awarded were not apportioned between the major claimants and the minor claimants by the learned Judge of the Tribunal and, therefore, these amounts are not severable and hence the award as a whole comprising the interest of major as well as minor claimants should be set aside. In this connection he has referred to the decision given by the Privy Council in AIR 1946 72 (Privy Council)

22. We find that the Privy Council decision above referred to has no application to the facts of the present case inasmuch as what was sought to be avoided in that case was a reference to arbitration which could obviously not have been severable. In the instant case, we are concerned with a specific amount wherein

the interest of the claimants would be in proportion to their interest in inheritance. Such an interest could be easily severed in the specific amounts awarded. Under the circumstances, we find that the share which the major claimants would have in the ultimate amount of compensation would be limited to the extent to which they would be entitled to these shares in the amounts settled.

23. In view of the above findings we hold that these appeals should partially succeed. In the result, the order of remand of all these matters to the Tribunal would stand but with clarification that the learned Judge of the Tribunal shall take up the matter from the stage at which the settlement was arrived at between the parties, i.e. from 6-4-1972. He shall, therefore, give an opportunity to the present Appellants to rebut the evidence produced by the claimants as well as to show that it was the driver of the military truck who was negligent in driving his vehicle belonging to the Government of India. The Government of India in its turn would be entitled to show that it is not liable to pay any compensation and that the driver of its truck had not committed any negligence.

24. In view of this, that part of the finding of the learned single Judge which states that the driver of the military truck is not found to have committed any negligence in driving his vehicle is set aside.

25. After giving the above stated opportunity to the parties the Tribunal shall be at liberty to dispose of the whole matter according to law deciding the question whether the negligence has been committed by the owner of the petrol tanker or by the owner of the military truck or by both. In case he finds that any or both of them has committed negligence and has incurred the liability to pay compensation to the claimants, he shall fix the amount of compensation as regards the minors according to the principles of law.

26. As already held above, the major claimants are bound by the settlement. Therefore, so far as the liability of the present Appellants is concerned, the learned Judge of the Tribunal shall not make any award against the present Appellants which is more than their due share of inheritance in the amounts settled as per settlement of 6th April, 1972. There shall, however, be such a limit in case the Government of India is found liable to pay compensation to the major claimants, because the Government of India was not a party to the settlement of 6-4-1972.

27. These three appeals are therefore disposed of accordingly without any order as to costs.

28. Parties are directed to appear before the Claims Tribunal on 3rd December this year. Miss Kamlesh Sharma who appears on behalf of the Union of India is given intimation of this date and further intimation be also given by the Registry to the Secretary, Ministry of Defence, Government of India.