

(1998) 04 AP CK 0005

In the Andhra Pradesh High Court

Case No : A.A.O. No. 2240 of 1997 & Appeal Against Order No. 2240 of 1997

New India Assurance Co. Ltd.

APPELLANT

Vs

Boda Hari Singh and Others

RESPONDENT

Date of Decision : 24-04-1998

Acts Referred:

Legal Services Authorities Act, 1987 — Section 19, 20, 21

Citation : (2000) ACJ 1580

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V. Bhaskara Rao, J.—This appeal is directed against the award and judgment in M.V.O.P. No. 450 of 1995 on the file of Chairman, Motor Accidents Claims Tribunal (District Judge), Warangal, dated 26.7.1996 awarding compensation of Rs. 35,000 to the petitioner towards full satisfaction of the claim against the respondent No. 3, insurer, who is the appellant herein.

2. The said M.V.O.P. has been dismissed against R-1 driver, and R-2 owner of the tractor bearing No. AP-36-T-4008 and trailer bearing No. AP-3T-4009, which was involved in the accident.

3. Mr. K. Subba Rao, learned counsel for the appellant insurer contended that R-1 and R-2 remained ex parte and the claim against them has been dismissed by the learned Tribunal and when once the claim has been dismissed against the insured, there can be no liability against the insurer. In support of his contention, he relied on a decision of the Supreme Court in Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, . It is further contended that the driver R-1 did not have a valid driving licence at the time of accident and as such an objection was raised and that the appellant had not agreed to settlement of the case at the Lok Adalat and hence the award under appeal is liable to be set aside.

4. Mr. A. Prabhakar Rao, the learned counsel for the respondent No. 1-claimant

contended that the impugned award is an award of Lok Adalat and no appeal lies against such an award u/s 21(2) of the Legal Services Authorities Act, 1987 (for short "the Act"). He has brought on record that the Government by S.O. No. 67, Law Department, dated 27th November, 1995, framed Rules under the Act called A.P. State Legal Services Authority Rules, 1995 and A.P. State Legal Services Authority Regulations, 1996 and brought the provisions of the said Act into force. It is, therefore, contended that the appeal is not maintainable in view of the express prohibition u/s 21(2) of the Legal Services Authorities Act, 1987.

5. I have carefully perused the award under appeal and considered the rival contentions. Lok Adalats are constituted u/s 19 and procedure for cognizance of cases by Lok Adalats is prescribed by Section 20 and Section 21 contemplates passing of award by Lok Adalat, and the nature of decree passed by Lok Adalat is that of a decree of civil court. Under Subsection (2) of Section 21 appeal is barred. That is the law in vogue as on the date of passing of the award under appeal.

6. Mr. K. Subba Rao, learned counsel has pointed out that the award under appeal has not been passed by Lok Adalat. He has demonstrated that fact by taking me through the award under appeal on the one hand and also by showing a copy of the award passed by the Lok Adalat at Karim nagar in O.P. No. 47 of 1996 dated 31.1.97 on the other.

7. I closely examined both these awards and I find that there is an amount of difference between both these awards. Award passed by Lok Adalat of Karimnagar contains the quorum constituting the Bench. At the very inception of the award, the names of Mr. Asgar Hussain, Judicial Member, Mr. B. Venkateswar, Advocate and II Member and Mr. C. Ramesh Sagar, Advocate and III Member are stated and thereafter award runs into two pages. It bears the signatures of the members constituting the quorum as well as the petitioner by name Najeeb Sultana on one side and respondent Anwar Begum on another side and the learned counsel appearing on both the parties. The format of this award is said to have been prescribed by the rules framed under the Act. Then turning to award passed by the M.v.O.P. Tribunal, Warangal. It reads that it is passed by Motor Accidents Claims Tribunal (District Judge), Warangal and the officer present is shown as Mr. N. Vidya Prasad, B.Sc, B.L., Chairman, Motor Accidents Claims Tribunal (District Judge), Warangal. The award does not bear the signatures of the parties or their counsel and on the contrary it is signed by the District Judge, Warangal and it bears the seal of the District Court. Evidently, it is passed by Motor Accidents Claims Tribunal (District Judge), Warangal, but not by Lok Adalat.

8. It is no doubt true that it is mentioned in the award under appeal that the parties have compromised the matter before the Lok Adalat. Learned counsel for the appellant is disputing this fact and is contending that respondent No. 3 never compromised and he did not sign any compromise memo and hence it cannot be said to be a compromise before Lok Adalat. Even without going into the disputed

question of fact, a mere reading of the award under appeal and comparing the same with the award of Lok Adalat of Karimnagar, I have no hesitation to hold that the award under appeal was passed by the Motor Accidents Claims Tribunal (District Judge) and not by Lok Adalat. While Mr. Subba Rao asserted that respondent No. 3 has not signed any compromise memo, no material is placed on record by the respondent to show that such a compromise memo signed by both the parties was filed in the lower court. Moreover, Section 20 of the Legal Services Authorities Act prescribes the procedure for the Lok Adalat to take cognizance of cases. There must be a reference by the court concerned in all pending cases. There is nothing on record to show that such a reference was made in this case. I, therefore, do not agree with Mr. S. Prabhakar Rao, learned counsel for the respondent that the award under appeal is passed" by Lok Adalat. In that view of the matter, the bar u/s 21(2) of the Act in respect of the appeal is not applicable to this case.

9. Moreover, the decree under appeal shows that the O.P. was presented on 11.9.1995 whereas the Act was brought into force on 9th November, 1995. It is not in dispute that the Act is prospective in operation. Hence, the provisions of the Act are not applicable to the case on hand and it follows that the bar u/s 21(2) of the Act does not apply.

10. The next aspect is regarding the liability of the appellant insurer. The lower court has dismissed the O.P. against the owner, but decreed the same against the appellant insurer. The question is whether the insurer is liable under such circumstances. The Apex Court in the judgment cited supra has held:

It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point.

The above ratio is applicable to this case and accordingly I hold that the award under appeal cannot stand. 11. There are two disputed questions of fact on which both the parties have to be given an opportunity to adduce the evidence. One is whether the driver possessed a driving licence at the time of accident and hence the appellant insurer is not liable to pay any compensation under the terms of the policy. Other is whether the appellant insurer is liable to pay any compensation and if so to what amount. Since evidence has to be adduced by both the parties, the matter has to be remanded to the lower court.

12. For the above reasons, the appeal is allowed and the award dated 26.7.1996, is set aside and the matter is remanded to the Motor Accidents Claims Tribunal

(District Judge), Warangal for fresh disposal according to law. Costs will abide by the result of the O.P.