
(2010) 12 RAJ CK 0061
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4217 of 2010

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Dhani Devi and Others

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Motor Vehicles Act, 1988 — Section 161(1), 165, 165(1), 166, 167

Citation : (2011) 2 RLW 1768

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : Mahaveer Vishnoi for Mr. Jagdish Vyas, for the Appellant; Anil Bhansali, for the Respondent

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned counsel for the parties. The present writ petition has been preferred to challenge the order passed by the Motor Accident Claims Tribunal-I, Jodhpur dated 12.11.2009 (Annex. 5) whereby the petitioner's - Insurance Company's application filed u/s 170 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988 for short) seeking permission to contest the claim of the respondents-claimants has been rejected with cost of Rs. 300/-.

2. According to the petitioner-Insurance Company, the claim petition has been filed collusively for getting the claim of the Insurance Policy by which the petitioner covered the risk of truck No. RJ-19-G-7257. According to the petitioner-Insurance Company, the said truck No. RJ-19-G-7257 was not involved in the accident and this plea was taken specifically in the reply filed by the petitioner-Insurance Company. It is also submitted that for this very accident FIR No. 299/2008 was registered at Police Station Bilara on 2.8.2008 itself as lodged by one Abhishekh Gulechha and wherein it has been stated that the car in which the victim were travelling collided with an unknown truck. Be it as it may be, the

petitioner sought permission u/s 170 of the Act of 1988 to contest the claim by moving the application wherein it has also been stated that the driver-cum-owner did not choose to cross-examine the claimants on material points which also suggests the collusion of claimants with the respondent owner/driver. The learned tribunal passed the following order in the order-sheet dated 12.11.2009 (Annex. 5):

3. On 12.5.2010, learned counsel for the petitioner submitted in the course of arguments that the Motor Accident Claims Tribunal-I, Jodhpur is not recording the evidence in accordance with rules and Insurance Companies even are not normally permitted to cross-examine witnesses of the claimants even on permissible grounds. However, another Motor Accident Claims Tribunal takes evidence in detail in the language of witnesses and permitting the parties to cross-examine the witnesses. Noticing these two procedures adopted by the two Motor Accident Claims Tribunals in one city Jodhpur itself, this court directed to issue notice to the Motor Accident Claims Tribunal-I, Jodhpur as that tribunal's procedure was questioned by the learned counsel for the petitioner.

4. It will be worthwhile to mention here that notice was issued to the Motor Accident Claims Tribunal-I, Jodhpur in spite of the fact that subsequently, learned counsel for the claimants submitted that in the interest of justice permission to contest the claim case may be given to the Insurance Company and Insurance Company may be permitted to cross-examine the witnesses of the claimants and this court allowed the cross-examination of the witnesses produced by the claimants by the same order. But to find out what should be the procedure for recording statement of the witnesses in Motor Accident Claims Tribunal, this court issued notice.

5. In response to the notice, a written submission has been sent to this Court by the Judge, Motor Accident Claims Tribunal-I, Jodhpur pointing out that the procedure adopted by the said Motor Accident Claims Tribunal i.e., Motor Accident Claims Tribunal-I, Jodhpur was in accordance with Rule 10.19 of the Rajasthan Motor Vehicles Rules, 1990 (hereinafter referred to as the Rules of 1990 for short), which provides recording of memorandum of substance of the evidence of the witnesses in the claim cases and, therefore, the procedure adopted by the said tribunal was correct and in accordance with law.

6. The respondents even after agreeing for allowing the Insurance Company to cross-examine the witnesses of the claimants submitted an application u/s 151 CPC pointing out that the petitioner mislead this court by placing on record the copy of the order-sheet dated 12.11.2009 (Annex. 5) and that was not the order itself but was the copy of the order-sheet only. According to the claimants, the Motor Accident Claims Tribunal passed the order on the back of the application submitted by the petitioner Insurance Company u/s 170 of the Act of 1988. The said order as drawn on the back of the application u/s 170 of the Act of 1988 is as under:-

12.11.2009

7. A bare perusal of both the orders would reveal that there are two orders on one application; one drawn in order-sheet (Annex. 5) duly signed by the Judge of the Motor Accident Claims Tribunal-I, Jodhpur and another as written on the back of the application, copy of which is placed on record as Annex. B alongwith the application filed u/s 151 CPC by the claimants. Normally detailed orders are drawn separately and operative portion is recorded in the order-sheet indicating that separate order has been passed and conclusion or operative part of the separate order are drawn in the order-sheet. It appears that though the last 3 words in order-sheet dated 12.11.2009 may be indicative to passing a separate order, but the language used may be confusing also, which may have resulted into issuing by the officer of the Motor Accident Claims Tribunal or obtaining the certified copy of the order drawn on order-sheet dated 12.11.2009 presuming said order-sheet dated 12.11.2009 to be the main order and, therefore, the petitioner may have placed on record the copy of the order-sheet dated 12.11.2009 only. The petitioner has placed on record the copy of the claim petition, the reply, the evidence recorded in the claim case, therefore, this court is of the view that it was not deliberate act of the petitioner to suppress the fact as alleged by the claimants that copy of the order-sheet is not the actual order.

8. Be it as it may be, the practice of writing order on the application itself cannot be appreciated and it should be avoided. When the tribunal or court is proposing to pass a brief order, which can conveniently be recorded in the order-sheet and that can be done even during the course of proceedings in the court as has been done in this case, which is apparent from the order drawn in the order dated 12.11.2009 wherein the learned Judge of the Motor Accident Claims Tribunal recorded that an application was submitted on behalf of the petitioner-Insurance Company during the cross-examination of the witnesses of the claimants and that has been rejected obviously by order passed on application itself, copy of which is placed on record as Annex. B. Therefore, the tribunal could have proceeded to pass this very order in the order-sheet in stead of drawing the order on the application and could have proceeded further to continue the courts business. Writing order on the application can create only confusion as even if the party to the litigation inspect the files to find out the orders, he is not supposed to look into back side of each of the applications so as to find out whether there is any order passed on the application or not and passing of the order on the application further makes a room for keeping orders at different places and also it may result into writing two languages for one decision; one in the main order and another in the order-sheet. In order sheet dated 12.11.2009 which must have been written subsequent to order dated 12.11.2009 as drawn on the back of the application, it is mentioned that during the course of cross-examination application u/s 170 of the Act of 1988 was submitted and it was rejected, whereas so is not written in order drawn on the back of the application. There may be several other reasons, but I need not to give exhaustive list nor it can be given for holding that the tribunal and courts should not write the orders

on the back of the applications and should draw the order in the order-sheet itself if the orders can be drawn in order-sheet and in brief.

9. However, detailed orders can be drawn separately and consequentially, the order-sheet is required to be drawn indicating that the separate order has been passed by the tribunal/court on the same day while indicating the result of that order in the order-sheet itself.

10. In this petition, since a larger issue has been raised about the procedure which can be the procedure for inquiry u/s 168 of the Act of 1988 for passing the award by the Motor Accident Claims Tribunal, therefore, it will be appropriate to look into the scheme under which the procedure has been prescribed for inquiry for adjudicating the claims arising out of Motor Vehicles Act.

11. Chapter XII of the Act of 1988 deals with the Claims Tribunals and as per Section 165, the State Government constitutes the Motor Accident Claims Tribunals wherein the application seeking compensation can be filed u/s 166 and Section 169 of the Act of 1988 provides for procedure and powers of the Claims Tribunals.

12. Section 169 of the Act of 1988 is as under:-

169. Procedure and powers of Claims Tribunals - (1) In holding any inquiry u/s 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedures 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.

(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.

13. Section 176 of the Act of 1988 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Section 165 to 174 and, therefore, the State Government is competent to prescribe the rule for holding any inquiry u/s 168 of the Act of 1988. The Sub-clause (b) of Section 176 which is relevant for our purpose is as under:-

176. Power of State Government to make rules. - A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:-

(a) *** **

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) *** ** ** ** **

(d) *** ** ** **

(e) *** ** ** **

14. The State Government exercising the powers u/s 176 as well as powers conferred by other Sections framed the Rules of 1990, Under Chapter 10 of the Rules of 1990, the Rules have been framed for the Claims Tribunal and method of recording evidence is provided under Rule 10.19 of the Rules of 1990. The Rule 10.19 of the Rules of 1990 is as under:-

10.19 Method of Recording Evidence. - The Claims Tribunal shall, as examination of witnesses proceeds, make a brief memorandum of a substance of the evidence of each witness and such memorandum shall be written and signed by the members of Claims Tribunal and shall form part of the record:

Provided that, if the member of the Chairman of the Claims Tribunal is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided further that the evidence of any medical witness shall be taken down as nearly as may be worded to word.

15. A bare perusal of Rule 10.19 clearly reveals that by statutory rules it has been provided that Claim Tribunal shall make a brief memorandum of a substance of evidence of each witness. It is also provided in the rule that said substance of evidence of the witness shall be recorded as examination of witnesses proceeds. Therefore, the rule 10.19 envisages and permits the recording of substance of evidence of the witness by the Claims Tribunals. The said memorandum is required to be written and signed by the "Members of the Claims Tribunal" and in the present case by the Presiding Judge of the Tribunal. The learned tribunal, therefore, has followed the procedure as prescribed under rule 10.19 by recording substance of the evidence of each witnesses in his own handwriting and that has been signed by the Judge, Motor Accident Claims Tribunal himself. Therefore, there is no illegality in recording evidence of the witnesses by the Motor Accident Claims Tribunal-I, Jodhpur in the manner in which it has been recorded. Proviso to the Rule 10.19 empowers the Claims Tribunal to get the memorandum to be written by other on his dictation. The only exception is provided under second proviso to Rule 10.19 which says that evidence of any medical witness shall be taken out as nearly as may be word to word.

16. The reason for enacting Rule 10.19 may be obvious so that the detail of the evidence may be curtailed to make the Claims Tribunal's inquiry, in fact, a

summary inquiry, which is in consonance with the sub-section (1) of Section 169, which specifically says that in holding any inquiry u/s 168 the Claims Tribunal may follow such summary procedure as it thinks fit and to avoid vagueness in summary procedure, the legislature itself has provided the summary procedure for recording evidence by enacting Rule 10.19.

17. So far as the procedure which has been adopted by the Motor Accident Claims Tribunal-I, Jodhpur is concerned, that since has been found in consonance with the Section 169 read with Rule 10.19 of the Rules of 1990, but another question which required to be addressed is whether there could be two procedures for different Motor Accident Claims Tribunals in the State of Rajasthan wherein some tribunals may record the statement of the witnesses in detail as is done in regular trial and some tribunals may hold inquiry u/s 168 in summary manner. Assuming for the sake of arguments, a vast discretion has been given to the tribunal by use of word "may" in Section 161(1) of the Act of 1988 empowering the tribunals to opt for summary procedure leaving room for taking long trial procedure even then there must be some uniformity in the procedure for at least in the same tribunals as constituted u/s 165(1) of the Act of 1988. In practice, the tribunals may feel more convenient in recording long statements in place of recording substance of evidence to avoid allegation of not recording the statement of witnesses fully or correctly, yet the summary procedure can be adopted and for that, the safeguard can be provided. It is clear from the rule that it is not specifically provided for not getting signature of the witness on the substance of evidence and it can be specifically provided by amending the rule 10.19 requiring obtaining signature of the witness on his substance of evidence and if there is any other legal hurdle in obtaining the signature of the witness over the substance of evidence then that can be removed as not only the rules but even the laws are hand-made of justice and cannot come in the way of imparting justice of speedy disposal of at least claim cases. This court also has no hesitation in observing that normally wherever summary procedure has been prescribed, yet the full long trial procedure is adopted and for that reason is given only that long procedure is more transparent and there may be allegation of not recording the complete or true gist of evidence or allegation of incorrect recording of evidence. For that the tribunals and courts are required to be firm and are required to obey the law to do the justice rather than to bow down to the pressure. It is for the legislature to think whether specifically providing of obtaining signature over the substance of evidence of witness under Rule 10.19 is required in the rule itself or not.

18. It appears that the petitioner-Insurance Company had grievance that the Insurance Companies are not normally permitted to cross-examine the witnesses of the claimants even on permissible grounds and on the issue which can be contested by the Insurance Companies. However, this contention cannot be accepted because of the reason that if any question relevant, which can be put to the witness by the Insurance Company either after obtaining permission u/s 170 or otherwise when is not permitted to be put to the witness by the tribunal then

certainly they can move appropriate application indicating their question in the application so that the appropriate order can be passed by the Tribunal for disallowing the question from the Insurance Company and then only, if law permits, it can be examined by the appellate court in accordance with law.

19. On merit of the case even after going through the order dated 12.11.2009, copy of which has been placed on record by the respondents-claimants as Annex. B, this court is of the view that except one reason that non-applicant no. 1's advocate is contesting the claim, therefore, the application filed by the Insurance Company is baseless and is liable to be rejected on payment of cost of Rs. 300/- but without deciding the issue as raised by the petitioner that whether there is collusion between the claimants and the applicant finding of which only for the purpose of allowing or rejecting the application of the applicant and, therefore, I do not find any just reason to recall the order dated 12.5.2010 by which the permission was granted to the Insurance Company to cross-examine the witnesses. I also perused the statements of the witnesses and the allegation of the petitioner and in view of the concession as given by the claimants, the petitioner's application deserves to be allowed to contest the claim of the claimant and learned counsel for the claimants submitted that after the order dated 12.5.2010 all the witnesses have already been cross-examined by the Insurance Company. In view of the above reasons, this writ petition is allowed. The impugned orders dated 12.11.2009 are set aside and the application of the petitioner as filed u/s 170 of the Act of 1988 is allowed. However, the tribunal is requested to decide the claim petition expeditiously.