
(2011) 02 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4219 of 2010

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Kanta and Others

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 13

Evidence Act, 1872 — Section 137, 137, 3

Motor Vehicles Act, 1988 — Section 168, 170, 176, 179

Citation : AIR 2011 Raj 83 : (2011) 6 RCR(Civil) 776 : (2011) 3 RLW 2594

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—At the request of learned Counsel for the parties, the matter is heard finally.

2. The present writ petition is having identical facts as were the facts in SBWP No. 4217/2010 preferred by the same party New India Assurance Co. Ltd. and these two writ petitions have been preferred because of the reason that because of one of the accident occurred on 2-8-2008, two separate claim petitions were filed before the Motor Accident Claims Tribunal No. 1, Jodhpur by two separate set of claimants.

3. In both the claim cases by identical order, Appellant's applications seeking leave to defend the claims were dismissed by the same Motor Accident Claims Tribunal. Both the writ petitions were listed together before this Bench on 12-5-2010 and it was submitted by learned Counsel for the parties that in the Motor Accident Claims Tribunal No. 1, Jodhpur the recording of evidence is not in accordance with the rules and the Insurance Companies are even not normally permitted to cross-examine the witnesses of the claimants even on permissible grounds, whereas another Motor Accident Claims Tribunal in the city of Jodhpur itself takes evidence in detail in the language of the witnesses and permits the

parties to cross-examine the witnesses. Therefore, in the writ petition No. 4217/2010 notices were issued to the Motor Accident Claims Tribunal No. 1, Jodhpur because of the reason that procedure adopted by the tribunal was questioned by the learned Counsel s for the parties.

4. SBCWP No. 4217/2010 was decided by this Court by detailed judgment dated 7-12-2010 and it has been held that Rule 10.19 permits the Motor Accident Claims Tribunal to record the memorandum of substance of evidence of witnesses and apprehension that the questions which are permissible for Insurance Company in cross-examination are not allowed to be put to the witnesses by the tribunal is concerned, the party should follow the procedure of submitting application stating their question in the application, so appropriate order can be passed by the tribunal and on the basis of which, obviously, in the appellate Court, the grounds can be taken by the aggrieved party. This Court also, when pointed out by learned Counsel for the Respondent that, the tribunal passed the impugned order on the back side of the application itself and copy of which has not been placed on record by the Petitioner thereby Petitioner suppressed the original order and placed on record the copy of the order-sheet only, observed that such practise of writing order on the back side of the application itself cannot be appreciated as it may cause confusion as happened in above case.

5. Though the judgment dated 7-12-2010 is a detailed judgment given in the same set of facts, which are available in the present writ petition, yet learned Counsel for the Petitioner very ably drew my attention to few more provisions and submitted that these provisions are also required to be considered and according to him if these provisions are considered, then the summary procedure would not be available in MACT trial where the award is appealable u/s 179 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988 for short).

6. According to learned Counsel for the Petitioner complete procedure for claims tribunal in the matter of adjudication of claims of the parties arising out of motor accident claims has been given in Chapter X of the Rules of 1990 framed under the Act of 1988 and as per the scheme of rules, the trial of the claim is just like the trial of a civil suit and in contesting matters, the parties are required to be examined by the Court and evidence of any witness includes examination-in-chief, cross-examination and re-examination as is provided u/s 137 of the Evidence Act, 1872. It is also submitted that cross-examination is a necessary part of the evidence without which the statement given by party cannot become the evidence. It is also submitted that the cross-examination gives a valuable right to the other party to bring on record the truth from the mouth of the witness himself and also gives a right to adversary party to expose the credibility of the witness himself. It is also in consonance with the principles of natural justice. According to learned Counsel for the Petitioner, if the evidence is recorded in the manner by recording the substance of evidence only by the Court/

Claims Tribunal then that excludes the cross-examination by the adversary party and, therefore, it is impermissible in a case where order/judgment is appealable.

7. In addition to above, learned Counsel for the Petitioner drew my attention to the Rule 10.28 of the Rules of 1990 which clearly says provisions Orders 18 and 26 of the Code of Civil Procedure, apply to the proceedings before every claims tribunal and Order 18 is procedure for recording of the evidence, which also allows cross-examination of the witnesses. Learned Counsel for the Petitioner also drew my attention to Rule 13 of Order 18 which allows recording of memorandum of substance of what the witnesses has deposed, but it applies only to the cases which are not appealable. Therefore, the procedure for recording of evidence in appealable cases is the procedure as provided by Rules 4 and 5 of Order 18, which permits the cross-examination and not mere recording of substance of the evidence. Learned Counsel for the Petitioner also pointed out that when he applied for the copy of the application submitted u/s 170 then he was delivered a certified copy without there being any order on the back of the application rejecting Petitioner's application u/s 170 filed by the Petitioner. The Petitioner, therefore, submitted the copy of the application u/s 170 of the MV Act as Annex. 4 in the present writ petition. The Petitioner also applied for certified copy of the order, upon which he was given copy of the order-sheet. When the learned Counsel for the Petitioner came to know about the fact of writing order on the back of the application filed u/s 170 of the MV Act, of the Petitioner from the reply filed by the Respondent then he again applied for the copy of the application and order which passed on the back side of the application then he was given certified copy of the application filed u/s 170 of the MV Act as well as copy of the order written on the back of the application. Therefore, the Petitioner has not suppressed any fact from the Court, but has submitted the facts on the basis of the documents, copies of which were supplied to him by the Motor Accident Claims Tribunal itself.

8. Learned Counsel for the Respondent submitted that the substance of evidence can be recorded in Motor Accident Claims Cases as held in the judgment delivered by this Court in SBCWP No. 4217/2010 - New India Assurance Co. Ltd. v. Smt. Dhani Devi &Ors.

9. I considered the submissions of learned Counsel for the parties and deem it proper to consider the submissions of learned Counsel for the Petitioner in some detail in spite of the fact that on this issue this Court (by me) has already rendered judgment in the case of Smt. Dhani Devi (supra).

10. Sub-section (b) of Section 176 of the Act of 1988 empowers the State Government to make rules for the purpose of carrying into effect the provisions of Sections 165 to 174 and, therefore, the State Government is competent to prescribe the rule for holding an inquiry u/s 168 of the Act of 1988. The State Government in exercise of powers u/s 176 of the Act of 1988 framed the rules of 1990 and applicant can submit the application for compensation arising out of an accident as provided under Rule 10.2 and thereafter, the claim tribunal

straightway can examine the applicant under Rule 10.6 and that too on oath and at this place, substance of such examination only required to be reduced in writing and to be signed by the Judge, Claims Tribunal on the basis of the facts stated in the application and the examination of the applicant. Under Rule 10.6, the claims tribunal can summarily dismiss the application if in the opinion of the claims tribunal there are no sufficient grounds for proceedings further and if the tribunal decides to proceed to adjudicate the claim then under Rule 10.8 issues notice to the other parties. As per Rule 10.9(2), if opposite party contest the claim, the claims tribunal in case when no written statement has been filed, is required to examine the parties upon the claim and is required to reduce the result of examination into writing, but when claim is contested then under Rule 10.10 after considering the written statement and evidence of the witnesses examined, obviously, under Rule 10.6 even after taking into account the local inspection if it was done by the tribunal, then on the basis of all those material, the issues are required to be framed. Rule 10.11 provides that after framing the issues, the claims tribunal shall proceed to record evidence thereon, which each party may desire to produce. Under Rule 10.16(1) power has been given to the claims tribunal to examine summarily any person who can give information relating to the case during local inspection. However, at this time oath is not required to be administered. Rule 10.17 empowers the tribunal to summon the witnesses.

11. Rule 10.19 provides examination of the witnesses by recording substance of evidence, but according to learned Counsel for the Petitioner this recording of substance of evidence of the witnesses can only be in the case where the award is not appealable. But where any award to be passed by the tribunal is appealable u/s 173, summary procedure cannot be applied. In support of his contention, learned Counsel for the Petitioner submitted that by virtue of Rule 10.28, procedure for evidence is required to be followed as provided under Order 18 of the CPC and after considering the Rules 4 and 5, the Hon'ble Supreme Court already held that evidence of parties can be recorded by way of affidavit and the Division Bench of this Court held that even where evidence is recorded by way of affidavit, the cross-examination of such witnesses by the rival party is necessary as it is fulfilment of requirement of principles of natural justice. Therefore, even where evidence by way of affidavit has been allowed, cross-examination has been justified by the legal pronouncement, whereas in cases, where substance of evidence is recorded by the tribunal then cross-examination is not permissible and it causes prejudice to the adversary party because in recording substance of evidence, the Court is not recording the suggestive question in the form in which in detail cross-examination it is recorded and, therefore, in absence of recording of suggestive question in the language of the witnesses in the light of the suggestion, serious prejudice is caused to the adversary party.

12. At this juncture, we may also notice that under Rule 13 of Order 18 also there is a provision for recording of memorandum of substance of what the

witnesses deposed, but this applies only in a cases where appeals lie against order/decreed passed and, therefore, according to learned Counsel for the Petitioner, this also suggests that in a case where appeal lies the procedure of summary trial stands excluded by statutory provisions of law if all the rules are construed harmoniously.

13. It appears that submission has been advanced assuming that in recording of substance of evidence, the cross-examination is not required to be recorded and under assumption that if in cross-examination suggestive question is put, it cannot be recorded by the tribunal, but the legal position is not so.

14. The word "evidence" is defined in Section 3 of the Indian Evidence Act, 1872, which says "evidence" means and includes all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called evidence. Therefore, evidence includes examination-in-chief, cross-examination and re-examination as provided u/s 137 of the Indian Evidence Act, 1872 which all constitutes the evidence. It is true that the procedure for claim deciding the claims under Motor Vehicles Act, 1988 is substantively similar to the trial of the suit in civil Court like filing of the petition, issuing of notices/summon, filing of reply, examination of witnesses before framing of issues, then framing of issues and summoning the witnesses, but there is a departure in the Rules of 1990 framed under the Motor Vehicles Act, 1988, which says that what shall be the method of recording of evidence. Rule 10.19 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 word to word.

15. The apprehension of learned Counsel for the Petitioner that in recording of substance of evidence, cross-examination is not permissible is not supported by any law because evidence includes examination-in-chief, cross-examination and re-examination of the witnesses and method prescribed under Rule 10.19 is the method of recording of evidence and not only of examination-in-chief. The word "evidence" is wider than the words "examination-in-chief", "cross-examination" and "re-examination" of witnesses. When there is a specific rule framed under Motor Vehicles Act, 1988 prescribing the procedure for recording evidence as prescribed under Rule 10.19 then that procedure shall apply for trial of accident claims. We cannot import any restriction with the help of Rule 13 of Order 18 of

CPC so as to hold that summary procedure will apply in cases where award is not appealable. The CPC is a general procedure for civil Courts whereas the Motor Accident Claims Tribunals are empowered to adopt their own procedure and in spite of availability of Rule 13 of Order 18 in the Code of Civil Procedure, the entire procedure of recording evidence has been given under Rule 10.19 then Rule 10.19 shall prevail, which empowers the tribunal to record the substance of evidence of witness including examination-in-chief, cross-examination and re-examination. The adoption of procedure provided under CPC is also not mandatory, which is apparent from Rule 10.28 of the Rules of 1990, which says that the provisions of CPC as given in Sub-clauses (a) and (b) under Sub-rule (1) of Rule 10.28 "may be applied to the proceedings before every claims tribunal". Therefore this general procedure cannot be given precedence over Rule 10.19 particularly in view of the fact that under the Motor Vehicles Act, 1988 entire procedure has been prescribed for trial and adjudication of the claims cases giving preference to the summary proceedings rather than to the long procedure as provided in Code of Civil Procedure.

16. In view of the above discussions, I do not find any reason to hold that the claims tribunal is required to record the statement verbatim in the language of the witnesses and this Court is not inclined to hold that the tribunal cannot adopt summary proceeding as provided under Rule 10.19.

17. The apprehension of learned Counsel for the Petitioner that cross-examination is not recorded by the tribunal cannot be accepted because of the reason that cross-examination forms the part of the evidence of a witness and cross-examination is valuable right available to the adversary party and without cross-examination evidence cannot complete.

18. As we have already noticed in the case of Smt. Dhani Devi (supra) that whenever there is objection to a question or statement of witnesses is not recorded, the parties are required to move appropriate application before the same tribunal during the course of recording of evidence so that there may be appropriate order by the Court/tribunal on the basis of which grounds can be taken in appeal by aggrieved party, if not satisfied with the order passed on application by the Court.

19. This Court already considered the practice of recording order on the back side of the application and that has been deprecated and in view of the arguments advanced by learned Counsel for the Petitioner, the observation of this Court made in the above case of Smt. Dhani Devi (supra) finds more support that Courts should not pass orders on the back side of the application.

20. In view of the above reasons as well as in the light of the decisions given in SBCWP No. 4217/2010 -- New India Assurance Co. Ltd. v. Smt. Dhani Devi and Ors. this writ petition is allowed as rest of the issues are same and the Petitioner's application u/s 170 of the Act is allowed and it has already cross-examined the witnesses and, therefore, now tribunal may proceed to decide the

matter.

21. In view of the above reasons, the application filed by the Respondent No. 1 being IA No. 12876/2010 is also dismissed.