(2008) 11 KL CK 0033

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 30059 and 30067 of 2008

New India Assurance Company Ltd. APPELLANT

Vs

Jameela and Others RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Insurance Act, 1938 — Section 2(11)
Legal Services Authorities Act, 1987 — Section 19, 22A, 22B, 22B(1), 22D
Motor Vehicles Act, 1988 — Section 163A, 166
Public Liability Insurance Act, 1991 — Section 3(1), 3(2), 4, 5, 6

Citation : (2009) 1 KLJ 314

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : K.K.M. Sheriff and A.A. Ziyad Rahman, for the Appellant; R.T. Pradeep and Vijulal, for the Respondent

Final Decision : Allowed

Judgement

V. Giri, J.—The New India Assurance Company challenges the awards passed by the Permanent Lok Adalath for Public Utility Services essentially on the ground that the said body had acted without jurisdiction in proceeding to decide a claim petition filed by the injured in a motor accident case, for compensation. Since the contentions raised in these two writ petitions are common, they have been heard together and are being disposed of by this common judgment. I will refer to WPC No. 30059/2008, taken as the leading case.

2. The first Respondent met with an accident on 26-11-2005 when he was walking along the road and a car owned by the second Respondent and driven by the third Respondent hit him. He sustained serious injuries and he claimed compensation to the tune of Rs. 6 lakhs. He filed O.P. No. 465/2007 before the 4th Respondent which is the Permanent Lok Adalath for Public Utility Services. On receipt of summons from the Permanent Lok Adalath the Petitioner entered appearance and disputed the maintainability of the petition. It was contended that the Permanent Lok Adalath has no jurisdiction to adjudicate the matter u/s

22C(8) read with Section 22D of the Legal Services Authorities Act, 1987 (hereinafter referred to as the Act). The claimant and the Respondents were not able to come to a settlement. Thereupon the Permanent Lok Adalath proceeded to adjudicate the dispute and by Ext. P-3 the claimant was permitted to realise an amount of Rs. 52,000 from the Petitioner, the third Respondent before the Permanent Lok Adalath with 9% interest from the date of petition till realisation. This has been challenged in this writ petition.

3. I heard learned Counsel for the Petitioner and the learned Counsel for the first Respondent. The Petitioner contends that the Permanent Lok Adalath is established u/s 22B of the Act and exercises jurisdiction in respect of one or more Public Utility Services. It does not exercise a general jurisdiction and therefore it does have the powers to adjudicate any dispute unless the dispute is in respect of one or more public utility services. ''Public utility service'' is defined u/s 22A(b) of the Act and the claim made by the injured or legal representatives of the deceased person, in a petition claiming compensation for injuries suffered in a motor accident, will not be a dispute touching upon the Insurance service as defined u/s 22A(b) of the Act. Consequently, the Permanent Lok Adalath was bereft of jurisdiction to consider Ext. P-1 or to pass an award in the nature of Ext. P-3, apparently on the premise that it is entitled to adjudicate a claim petition for compensation, like a Motor Accidents Claims Tribunal. In other words, the challenge against the award Ext. P-3 is on the ground that it is bereft of jurisdiction.

4. Learned Counsel for the Respondents submits that the Motor Vehicles Act inter alia provides for compulsory insurance for any motor vehicle and consequently the claim by an injured in a motor accident against the owner or driver of the vehicle would also be a claim against the insurer and the dispute raised in that behalf would characterise itself as a dispute touching upon the insurance service. He therefore contends that Permanent Lok Adalath would have jurisdiction to decide a claim petition filed by the injured in a motor accident case. Alternatively, he submits, that such jurisdiction must be vouchsafed in favour of the Permanent Lok Adalath at least in cases where the insurance company does not deny the existence of a valid insurance coverage of the vehicle in question, which was involved in the accident. I find that the question raised in this regard is not traversed by any judgment of the Supreme Court or this Court. Therefore, I have anxiously considered the issue.

5. Chapter VI A of the Act was substituted by amendment of the Legal Services Authorities Act brought about in the year 2002. Section 22A(a) defines Permanent Lok Adalath as one established under Sub-section (1) of Section 22B. Section 22A(b) defines the Public Utility Services as follows:

''Public Utility Services'' means any (i) transport service for the carriage of passengers or goods by air, road or water; or (ii) postal, telegraph or telephone service or (iii) supply of power, light or water to the public by any establishment or (iv) system of public conservancy or sanitation (v) service in hospital or dispensary (vi) insurance service.

6. Section 22B provides for the establishment of a Permanent Lok Adalath. Section 22B(1) reads as follows:

22B(1). Notwithstanding anything contained in Section 19, the Central Authority or as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

7. Section 22C provides for cognizance of cases by Permanent Lok Adalath. Section 22C provides that Permanent Lok Adalath should permanently settle the points in dispute between the parties and try to effect conciliation between them. But a distinguishing feature in so far as the powers of the Permanent Lok Adalath is concerned is what flows out of Section 22C(8) and the same reads as follows:

22D(8). Where the parties fail to reach at an agreement under Sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

8. In effect therefore where the parties fail to arrive at a settlement, Permanent Lok Adalath is not rendered helpless but is given the power to proceed to adjudicate the dispute as such, subject to the condition that the dispute is not related to any offence. A Lok Adalath constituted under Chapter VI derives its jurisdiction to proceed to settle certain disputes only when the parties agree for such settlement. In other words, power of adjudication, de hors any submission made in this behalf by the parties to the jurisdiction of the Lok Adalath, is not contemplated in so far as the Lok Adalaths constituted under Chapter VI of the Act are concerned. But a permanent Lok Adalath is competent to decide contentious issues as well. I also refer to the fact that Section 22E of the Act provides that an award passed by the Permanent Lok Adalath either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them. The award is deemed to be a decree of a civil Court and therefore can be executed in that behalf [see Section 22E(3) and 5]. I have referred to the above features to understand the powers of adjudication therefore available to a Permanent Lok Adalath. Obviously this cannot be inferred. But a Lok Adalath and a permanent Lok Adalath would only be vouchsafed with powers strictly in consonance with the statutory powers providing for their establishment and laid down in that behalf. It cannot be gainsaid that Permanent Lok Adalaths are entitled to only deal with such disputes which touch upon "public utility services". The term is defined u/s 22A(b) of the Act. What is really considered in the present case is the scope of the provision "public utility services" in so far as it mentions the term "insurance service". It would have been ideal if the legislature had defined insurance service for the purpose of ascertaining the limits of jurisdiction of the Permanent Lok Adalath in that regard. But it has not been done and therefore it would be necessary to

refer to similar terms as they are defined in statutes covering the same field. The Insurance Act, 1938 does not define an insurance service but significantly it defines Life Insurance business, Marine Insurance business, General Insurance business and Fire Insurance business. Life Insurance business is defined u/s 2(11) of the Insurance Act. The same reads as follows:

2(11). Life Insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include-

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance.

(b) the granting of annuities upon human life and

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons.

9. What is therefore indicated by Life Insurance Business as defined is the business of effecting contracts of insurance upon human life. It can also include any contract which assures the payment of money on death or other contingencies as well. The Insurance would therefore depend upon a bilateral agreement between the insurer and the insured. Once there is a contract of insurance, the insurance company may be called upon to render insurance service. A service rendered by an insurer, as part of it''s activities would be called as insurance service. The term insurance service as defined u/s 22A(b)(vi) of the Legal Services Authorities Act could be judged in the said context. Insurance Service is treated as a part of the public utility service and therefore what is contemplated by Section 22A(b)(vi) read with Section 22B in so far as the public utility service touching upon the insurance business is concerned, is a dispute arising out of the insurance business carried on by the insurance company. There are several disputes which arise between the insured and the insurer, for example dispute arising on account of deficiency in service rendered by the insurance company. Obviously such dispute would fall within the purview of Section 22A(b)(vi) read with Section 22B and would therefore be comprehended by the powers of the Permanent Lok Adalath.

10. The crucial question is whether the claim petition filed by the first Respondent would also be a claim within the ambit of "insurance service". The term is not defined under the Legal Services Authorities Act. A dispute raised by an injured or for that matter a legal heir of deceased person claiming compensation arising out of a motor accident cannot be construed as one essentially touching upon the insurance service rendered by the insurance

company. One has to understand the legislative background relating to establishment of Motor Accidents Claims Tribunals as specialised Tribunals to deal with claims arising out of motor accidents. Therefore, prior to the establishment of Motor Accident Claims Tribunals, the claim for compensation was dealt with by Courts of general jurisdiction. On establishment of MACTs, the jurisdiction exercised by the civil Courts came to be exercised by the specialised Tribunal. The MACTs are therefore established as specialised Tribunals under the provisions of the Motor Vehicles Act. That claims similar to those filed by the first Respondent herein are obviously cognizable by the MACT established under the Motor Vehicles Act is not disputed by any party concerned. A claim by the injured in a motor accident is only a claim for compensation filed by the injured who has suffered from a tortious act of Anr. person. A tortious act gives rise to claim for damages, by a person who has suffered from the act. In spite of the fact that the claim is adjudicated by Tribunals, the essence of a claim petition filed u/s 166 or 163 A of the Motor Vehicles Act is nothing but a claim for compensation filed by a person who has suffered at the hands of a tortfeasor. Therefore what is to be first adjudicated in such a claim petition u/s 166 of the Motor Vehicles Act is whether the vehicle in question was driven by the driver in a rash and negligent manner. Whether the claimant was a joint tortfeasor and whether there was composite negligence are also matters which will come up for consideration. If the Court finds that the accident occurred on account of the negligence of the driver of the vehicle, then the claimant is entitled to compensation. But this is a matter for adjudication by a Court on an aspect which essentially involves a claim by an injured person against a tortfeasor and that, in my view is not comprehended by the term "insurance service" as occurring in Section 22A(b)(vi) of the Legal Services Authorities Act. In other words, a dispute which comes into existence from a claim petition filed by the injured in a motor accident is not a dispute touching upon "insurance service" for the purpose of Chapter VIB of the Legal Services Authorities Act.

11. What would therefore be a dispute touching upon insurance service for the purpose of the Act. In my view, they would essentially comprehend disputes arising between the insurer and the insured. That would include cases of repudiation by the insurer and claims of inadequacy of service rendered by the insurer. Learned Counsel for the first Respondent submits that it may not be safe to restrict cases of disputes relating to insurance service as coming under the Legal Services Authorities Act to cases where disputes arise under the contract of insurance. He refers to the Public Liability Insurance Act, 1991 which provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. It provides for an obligation on the part of the industrial undertaking to give such reliefs as is specified in the schedule to the Act whenever there occurs death or injury to any person or damage to any property resulting from an accident. Section 4 of the said Act obliges the owner to take out a policy. Section 6 of the Act provides for

an application for claim for relief to be made to the Collector and an award of relief by the Collector in terms of Section 7. The Collector is vouchsafed the powers of the civil Court in terms of Section 5 of the Act. But a claimant for compensation arising from a motor vehicle accident under the Motor Vehicles Act does not enjoy a similar privilege. Even the facility for a fixed amount relating to "No fault liability" is only by way of an interim relief in a regularly instituted petition for compensation, which if contested, would obviously require proof of negligence by the tortfeasor as the basis for an award.

Thus the situation in relation to claim for compensation under the Motor Vehicles Act stands on a different footing and the crucial distinction is evident from Section 3(2) of the Public Liability Insurance Act, 1991 which reads as follows:

3(2) In any claim for relief under Sub-section (1) hereinafter referred to in this Act as claim for relief, the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

12. The discussion made above leads me to the conclusion that a Permanent Lok Adalath would be bereft of jurisdiction to decide a claim petition filed by a claimant arising out of a motor accident. As the statutory position currently obtains only the Tribunals constituted under the Motor Vehicles Act have jurisdiction to decide such cases. The Permanent Lok Adalath was devoid of jurisdiction to entertain Ext. P-1 complaint or pass Ext. P-3 order.

13. For all these reasons, I find the Petitioner is entitled to succeed. The writ petition is allowed. Ext. P-3 order passed by the Permanent Lok Adalath is set aside. On a query made by me, the learned Counsel for the Petitioner the insurance company submits that they have approached this Court essentially for a decision on the question of jurisdiction of the Permanent Lok Adalath and that in the circumstances the company has decided to pay the compensation as awarded by the Permanent Lok Adalath as per Ext. P-3. This, he undertakes to do so within a period of two months from today.

