(1982) 03 BOM CK 0010

In the Bombay High Court

Case No : First Appeal No. 535 of 1979

Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Balkrishna Ramchandra Nayan and others	RESPONDENT

Date of Decision : 04-03-1982

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 294
Civil Procedure Code, 1908 (CPC) — Section 144
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1939 — Section 100E, 110A, 110B, 110D, 110E

Citation : (1983) ACJ 38 : AIR 1982 Bom 277 : (1985) 57 CompCas 215 : (1983) MhLj 443

Hon'ble Judges : S.P. Bharucha, J;Masodkar, J

Bench : Division Bench

Judgement

Bharucha, J.—This is an appeal against of the Motor Accidents Claims Tribunal for Greater Bombay rejecting the application of the appellants to direct by an Award the owners of the vehicle concerned, the opposite parties to the application and respondents Nos. 2 and 3 before us, to pay to the appellants the sum of Rs. 1,88,125 with interest thereon at the rate of 6% per annum from March 20, 1978, till payment.

2. On April 14, 1969, an accident took place at Bombay involving a vehicle owned by the respondents. One Balkrishna Nayan (respondent No. 1) was injured in the accident. He filed before the Tribunal, application No. 727 of 1969, against respondents Nos. 2 and 3 for compensation. There appellant were jointed as insurers of the vehicle. On December 12, 1974, the Tribunal made an award directing respondents Nos. 2 to 3 and the appellant pay to Dr. Nayan the sum of Rs. 1,43,400 with interest thereon at the rate of 6% per annum from the date of the filing of the claim till payment and costs in the sum of Rs. 1,000. Against the award an appeal was filed in this court (beings First Appeal No. 449 of 1975) by respondents Nos. 2 and 3 and the appellants. On March 23, 1976, the appeal was dismissed. The court then passed, inter alia, the following orders :

"(2) The award passed by the Tribunal is confirmed but thee appellant-insurance company is given to apply on depositing Rs. 20,000 with interest as ordered in the award from the date of the application to the date of the deposit, for not issuing a certificate, against the insurance company under s. 110E for the balance of the amount awarded on the ground that the liability of the insurance company limited to Rs. 20,000 under s. 95(2) or the amount for which the insurance company has issued the policy whichever is higher.

(3) The Tribunal to decide the question of the liability of insurance company on its application for the said purpose under s. 110E after giving an opportunity to all the parties."

3. The matter was carried in appeal to the supreme Court by the respondents. On January 26, 1972, the Supreme Court dismissed the appeal. Dr. Nayan then filed before the Supreme Court, Civil Miscellaneous petitioner No. 1347 of 1978 in the appeal. In that petition the supreme Court on February 3, 1979, passed the following order :

Heard learned counsel for all the three parties, namely, the claimant, the insurers, as also the insured. In our opinion, reading the judgment of the High Court and of his court passed is appeal as well as in the review matter, it is clear that the award made by the Tribunal for the amount of about Rs. One lakh and forty thousand casting and joint a several liability on the insured and the insurers has remained intact. It has not been affected in any way be any direction given by the High Court as affirmed by this court. In other words, it is open claimant to claim the whole of that amount from the insurer or the insured in accordance with the M.V. Act, 1939.

The Tribunal, however, as directed by the High Court, and the said direction having not been interfered with by this court, may proceed to determine the liability of the insurer, if the insurance company has carried out the condition for determination of that liability, namely, deposit of Rs. 20,000 with interest. But it is made clear that the determination of this liability will be only for the purpose of apportioning the liability between the insured and the insurer as between themselves. It will not affect the joint and several awards made against them in favour of the claimant and will not affect or delay his right at all for the realisation of amount. If the insurer is made to pay an amount in excess of the amount of liability determined by the Tribunal in pursuance of the direction of the High court. It will be open to the insure to proceed against the insured in accordance with law for reimbursement of the said amount. We, therefore, direct the Tribunal to proceed in this matter in the light of this order."

4. On March 20, 1978, the appellants paid the entire amount due under the award.

5. In the meantime on May 10, 1976, pursuant to the said directions of this court in the appeal, the appellant made an application to the tribunal to apportion the liability under the award between themselves and respondents Nos.2 and 3. On

November 9, 1978, the Tribunal declared that the said liability of the appellant was limited to Rs. 20,000 only. On November 15, 1978, the appellants filed the present application before the Tribunal to recover from respondents Nos. 2 and 3 the excess amount paid by the appellant under the award.

6. The Tribunal by the order under appeal, dated February 20, 1979 came to the conclusion that s. 110E of the M.V. Act, 1939 (hereinafter referred to as "the said Act") did not empower the Tribunal to issue a certificate of recovery in respect of money payable by the owner of a vehicle to its insurer. In its view, an award of the Tribunal could not settle a claim between the owner and the insurer and could not direct the owner to pay money to the insurer. It held that the appellant would have to proceed against respondents Nos. 2 and 3 in a suit a civil court for reimbursement of the excess amount. The Tribunal rejected the application.

7. Against that order this appeal is filed.

8. It was contended by Mr. Gumaste, learned counsel for the appellants, that it was clear from the said direction of this court in the appeal and of the Supreme Court that the Tribunal was to decide the question of the appellant''s liability under s. 110E of the Act. That provision empowered the Tribunal to issue a certificate in respect of money due under an award to the Collector whereupon the Collector had to proceed to recover the money due in the same manner as arrears of loans revenue. In Mr. Gumaste''s submission, it was incumbent upon the Tribunal to proceed to carry out these direction regardless of its own interpretation its powers. He submitted that it was not open to respondents Nos. 2 and 3 to challenge before the Tribunal its power in the application; they should have challenged the applicability of s. 110E of Act before this court when it gave the directions of March 23, 1967, or before the Supreme Court when it affirmed the same. Mr. Gumaste submitted that there was, in any case, power vested in the Tribunal to issued a certificate to recover amounts due by one opposite party to another under an award. To substantiate this contention, Mr. Gumaste took us through the scheme of chapter VIII of the act and showed us that under the Bombay Motor Vehicles Rules, the Tribunal was vested with the power exercisable by a civil court under s. 144 of the CPC, 1908.

9. Mr. Tijoriwala, learned counsel for respondents Nos. 2 and 3, submitted that no appeal lay against the order passed by the Tribunal rejection the application, for it was not an award. He also contended that the Tribunal has no power to issued a certificate under s. 110E against one opposite party to recover money due other opposite party. In his submission, by the order dated November 9, 1978, the Tribunal had only determined the amount of the liability of the appellants as the insurers and this was not tantamount to an award to which the provisions of s. 110E would apply.

10. In view of the facts that we have permitted the appellant to challenge the said order also under arts. 226 and 227 of the Constitution, the point as to the maintainability of the need not be considered.

11. This court in the appeal gave by its said directions liberty to the appellants to apply to the Tribunal for the balance of the amount awarded on the ground that its liability was limited. It expressly directed the Tribunal to decide the question of the appellants'' liability of the said purpose under s. 110E. Section 110E read thus :

"Where any money is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the money, issued a certificate for the amount to the collector and the collector shall proceed to recover the same in the same manner as an arrear of land revenue."

12. From the phraseology used, there can be no doubt that this court intended and directed that the provisions of s. 110E be put into effect upon the appellants'' application for determination of their liability, which meant that the Tribunal was directed to issue a certificate under s. 110E for recovery from the respondents 2 and 3 of such excess amount as had been paid the appellant under the award.

13. The Supreme court, by the order dated February 3, 1979, ordered the Tribunal "as directed by the High Court, and the said direction having not been interfered with by this court" to proceed to determine the liability of the appellants. The Supreme Court thus made it clear that this court''s order in its fullest amplitude remained operative and the Tribunal was directed to comply with it. The further statement in the order that it would be open to the appellants to proceed against respondents Nos. 2 and 3 in accordance with law for reimbursement of the excess amount after the excess amount was determined by the Tribunal pursuant to this court''s directions only affirms that this court''s directions were fully effective. It does not exclude, as was sought to be suggested by Mr. Tijoriwala, the operation of s. 110E as a method of recovery of the excess amount.

14. In our view, upon an interpretation of the said directions of this court in the appeal and of the Supreme Court, the Tribunal was obliged to determine the liability of the appellants and to amply the provisions of s. 110E to recover the excess amount paid by the appellants under the award from the respondents 2 and 3. Any quarrel with the employment of these provisions for this purpose should have been raised by respondents Nos. 2 and 3, not before the Tribunal, but before this court in the appeal or before the Supreme Court when it endorsed this court''s directions. This is sufficient to allow the appeal.

15. Since, however, the question of the power of the Tribunal to issue the certificate under s. 110E has been canvassed, we propose to discuss our finding thereon. Section 110B and s. 110D must be first set out :

"110B. On receipt of an application for compensation made u/s 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or person to whom compensation shall be paid, and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

110D. (1) Subject to the provisions of sub-section (2), any person aggrieved by a award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court :

Provided that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of Claims Tribunal, If the amount is dispute to the appeal is less than two thousand rupees."

16. It will be observed that the Tribunal is required in making the award to specify the amount to be paid thereunder by the insurer, the owner and the driver of the vehicle involved. Apportionment if liability between them is a function of the Tribunal and the apportionment is a part of the award. The recovery of the amount paid in excess of its liability by one opposite party from another opposite party is, then, the recovery of money due under an award and s. 110E is attracted. It must also be noted in this connection that s. 110E refer to monetary due from any person under an award. It is, therefore, not correct to say, as the Tribunal did, that the Tribunal does not have the power to issue a certificate under s. 110E recover money due by one opposite part from another opposite party.

17. Mr. Tijoriwala placed reliance upon the fact that the appellants had not raised the plea that their liability was limited before the Tribunal He submitted that, has they done so, as they should have done, the Tribunal would have had to apportion liability and would have given an award under which the liability of respondents Nos. 2 and 3 and the appellants was several, in which case the appellants could not have been made to pay under the award an amount larger than the amount of their liability and no question of recovering the excess would have arisen. The Act, he urged, did contemplate payment of an amount larger than that found to be the liability of a party and it, therefore, did not provide for the recovery of the excess. We do not see the force of this argument. The Tribunal has, as the last words of s. 110B show, the power to make joint and several awards and s. 96(4) contemplated a situation where the insurer makes a payment under the award larger than limited liability.

18. Reference must also be made to s. 110E whereunder the jurisdiction of the civil courts is barred in respect of "any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal". It is necessary to lay stress on the words "any question relating to any claim for compensation". The determination of the liability of a party and, therefore, the determination and recovery of the excess thereon paid by him under an award is

such question, and its seisin by a civil court is barred. The impugned order is erroneous in so far as it refers the appellants to a civil suit to recover the excess amount.

19. Under s. 111A of the Act, the State Government is empowered to make rule to provide, inter alia, what power vested in a civil court may be exercised by the Tribunal. Under r. 294 of the Bombay Motor Vested Rules, 1959, the Tribunal is empowered to exercise all the power vested in civil court under the provisions of s. 144 of the CPC, 1908. The relevant portion of s. 144 provides as follows :

"144. (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revisions or other proceeding or is said or modified in any suit instituted for the purpose, the court which passed the decree or order hall on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupies but for such decree or order or such part thereof as has been varied, revered, set said or modified; and for his purpose, the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and seen profits, which are properly consequential on such variation, reversal, setting said or modification of the decree or order."

20. The Tribunal is, therefore, empowered to order recovery of money that become due as and by way of restitution. It may do so by adopting the procedure under s. 110E. There seems to us to be no reasons why the order by which the liability of the appellants under the awards was restricted or Rs. 20,000 may not be said to be variation of the award for, under the provisions of s. 144, the variation need not be only in appeal or revisions but be any other proceeding also. Looked as even as recitation, the Tribunal could and should have exercised the power under s. 110E upon the application of the appellants.

21. In the premise, the appeal must be allowed. The order of the Motor Accidents Claims Tribunal dated February 20, 1979, is set aside. The Tribunal is directed to issue a certificate under s. 100E certifying that the sum of Rs. 1,88,125 with interest thereon at the rate of 6% per annum from today till payment is recoverable by the appellants from respondents Nos. 2 and 3.

22. Respondents Nos. 2 and 3 shall pay to the appellants the costs of the appeal.