(1991) 12 KAR CK 0002

In the Karnataka High Court

Case No : M.F.A. No''s. 2406, 2407 and 2408 of 1991

Oriental Insurance Co. Ltd. APPELLANT

Vs

K.R. Shivaprakash and Others RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 25
Hindu Minority and Guardianship Act, 1956 — Section 8
Motor Vehicles Act, 1988 — Section 173

Citation : (1993) ACJ 247

Hon'ble Judges : M. Rama Jois, J;B.N. Krishnan, J

Bench : Division Bench

Advocate : H.G. Ramesh, for the Appellant; Sampath Ananda Shetty, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Krishnan, J.—These appeals have been preferred by the insurer of the bus bearing registration No. MEU 4545 which was involved in an accident on 30.5.1989 on K.H. Road in Chikmagalur town, resulting in the death of one Sidde Gowda and another person Velu and injuries to one Ninge Gowda.

2. It was urged by the learned advocate for the insurer that the Tribunal was not right in fastening the liability to satisfy the award It was urged that there was breach of condition of the policy, in that the vehicle had been entrusted by the insured to a person who was not holding a valid licence and, therefore, the Tribunal was not justified in fastening the liability to satisfy the award on the. On facts we are satisfied that the Tribunal was justified in negativing the contention advanced by the insurer in this regard. It may be noticed that apart from the fact that the insurer has not established that there has been any breach of the condition of the policy, there was not even a plea taken by it to the effect that the insured had entrusted the vehicle to a person who was not holding the licence. Therefore, we are satisfied that all these appeals deserve to be

dismissed.

3. However, one important aspect relating to the deposit of the money payable to the minor claimants in the fatal accident cases was brought to our notice and it was pointed out that the Tribunal has held that no direction relating to deposit of share on the insurer. On facts we are satisfied that payable to the minor petitioner could be given by it in view of the decision of this Court in Malumbi Vs. Albin Abdul, and it was urged that the law declared in this regard in the said decision requires a second thought. The learned single Judge in Malumbi''s case (supra) has held that the Claims Tribunal in directing the amount to be applied in a particular manner, viz., to deposit in a nationalised bank is quite arbitrary and illegal and the reason for the said conclusion is as hereunder:

Nowhere in the Act or the Rules framed thereunder it is said that the compensation awarded can be distributed and utilised in the manner which the Judge or the Tribunal desires. When the Act is silent it is not the concern of the courts to direct the amount to be deposited in a particular manner. Because when once compensation is awarded it is awarded for the loss caused to the family of the claimants and how it has to be spent or distributed or applied is the concern of the claimants and not the duty of the courts. After all the duty of the court is to see that its dignity and decorum is maintained and not by giving direction that deposits to be made in a nationalised bank as by such an approach it may lead to create a sort of thinking in the mind of the litigant public that of late courts have started, apart from discharging their duties of dispensation of justice, to engage also in acts of mobilising the resources of some of the institutions. The court shall also take into consideration compensation means to recompense, that is, to make the aggrieved person feel otherwise for the loss caused earlier. Compensation shall not be equated to one of compulsion as the Claims Tribunal has now done by directing the parties to deposit whatever compensation awarded in the nationalised bank even against the need and desire of the claimant. Hence there is no other go but to say that the duty of the court or the Tribunal while considering the application whether it is under Motor Vehicles Act or Land Acquisition Act is to quantify and award the compensation and not to direct the compensation amount awarded to be spent or utilised in a particular manner. Hence, the order under challenge is liable to be set aside.

It has to be seen whether this conclusion of the learned single Judge requires reconsideration. One of the compelling reasons for the aforesaid conclusion by the learned single Judge is that there is no provision in the Act or the Rules framed thereunder, enabling the court to direct the amount to be deposited in any particular manner. Secondly, as per the said reasoning giving of any such direction may result in a thinking amongst the litigant public that courts have started to mobilise resources of some institutions and even from that angle direction to make deposits of the amounts awarded not only in motor accident cases but also land acquisition cases would not be proper. With great respect to the learned Judge, we are unable to be persuaded to agree with the view for more than one reason. Firstly, the conclusion of the learned single Judge is opposed to a Division Bench decision of this Court in Miscellaneous First Appeal No. 2193 of 1987 wherein certain guidelines have been given to the courts regarding the deposit of the amounts awarded by the Tribunal, relying upon the decision of the Gujarat High Court in Muljibhai and Another Vs. United India Insurance Co. Ltd. and Others, Even apart from that it may be noticed that the Tribunal which is for all practical purposes a civil court with jurisdiction on specified matters has all the trappings of the civil court and it has got a duty to give direction to keep the amount awarded in the case, for safeguarding the interests of the claimants.

4. Though the learned single Judge in Malumbi Vs. Albin Abdul, has proceeded on the assumption that the Tribunal deciding a case u/s 110-A of the Motor Vehicles Act is a court, having regard to the importance of the question raised before us which has day-today application before all the Tribunals, we would like to refer to this aspect of matter in a little greater detail. In the decision reported in Bhagwati Devi and Others Vs. I.S. Goel and Others, the Supreme Court held that the Motor Accidents Claims Tribunal constituted under the Act is a civil court for the purpose of Section 25 of CPC and it has observed as hereunder:

In view of the observations of this Court in State of Haryana v. Darshana Devi 1979 ACJ 205 , we are of the view that the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act is a civil court for the purposes of Section 25 of the Code of Civil Procedure. We are satisfied that the cases before us are fit cases for being transferred from the file of the Motor Accidents Claims Tribunal, Moradabad, to the file of the Motor Accidents Claims Tribunal, Delhi....

Following this decision, in Noreen R. Srikantaiah Vs. L. Dasarath Ramaiah, Gulbarga and Another, a Division Bench of this Court has held that the Motor Accidents Claims Tribunal is a subordinate court for the purpose of Section 24, Civil Procedure Code. This is how in Srikantaiah''s case, the Division Bench of this Court has observed with reference to entrustment of judicial power to both the court and judicial Tribunal.

The distinction between the concepts of a court and a Tribunal consists in that though both are vested with and exercise, the ''judicial power'' of the State, a ''court'' as part of the system of ordinary civil courts of the land, exercises the ''judicial power'' to try all cases of a civil nature, excepting those whose cognizance is either expressly or by implication barred; while the Tribunal has and exercises ''judicial power'' in special matters statutorily conferred and delimited. On considerations of policy, the ''judicial power'' of the State is transferred to and exercised by the ''ordinary courts of the land'', or ''the courts of the country'' as they are known. They are part of the ordinary hierarchy of courts of civil judicature; but there is nothing to prevent the State from entrusting its ''judicial power'' in special matters and in special disputes to judicial ''Tribunals''.

So both derive their power from and partake of, a common source?the ''judicial power'' of a sovereign State. They necessarily share the common features characteristic of and incidental to the very nature of the power they exercise; and to the commonness of the source of that power. In the case of courts, however, the procedure followed by and usually associated with, them and the possession of certain inherent and subsidiary powers intended to help them to effectuate their task are described as the usual ''trappings'' of the courts.

XXX XXX XXX Essentially both a ''court'' and a judicial ''Tribunal'' must share the characteristics and qualities arising out of the entrustment of the ''judicial power''.

XXX XXX XXX The mere lack of general jurisdiction to try all suits of a civil nature does not necessarily yield the inference that the forum is not a court. A court can also be constituted with limited jurisdiction.

By the very nature of the judicial power exercised by the Tribunal, though in a limited field, possession of certain inherent and subsidiary powers intended to help them effectuate their task described as usual trappings of the court is practically a must. The Supreme Court in the decision in State of Haryana v. Darshana Devi 1979 ACJ 205 , has upheld the decision of the Full Bench of the Punjab and Haryana High Court in extending the provisions for suing as pauper in an auto accident claim and has observed as hereunder:

The poor shall not be priced out of the justice market by insistence of court fee and refusal to apply the exemptive provisions of Order 33, Civil Procedure Code. So we are distressed that the State of Haryana, mindless of the mandate of equal justice to the indigent under the Magna Carta of our Republic, expressed in Article 14 and stressed in Article 39-A of the Constitution, has sought leave to appeal against the order of the High Court which has rightly extended the ''pauper'' provisions to auto-accident claims. The reasoning of the High Court in holding that Order 33 will apply to Tribunals which have the trappings of the civil court finds our approval. We affirm the decision.

Section 151, Civil Procedure Code, gives recognition to an all-important power of civil court to make such orders as may be necessary for the courts of justice or to prevent abuse of the process of the court by declaring that the said power is inherent in the civil court.

5. Having regard to all these decisions we are satisfied that the Motor Accidents Claims Tribunal should be deemed to be a civil court for certain purposes and it exercises judicial powers of the sovereign States in special matters and, therefore, it should, by virtue of the very entrustment of that power, be held to possess certain inherent and subsidiary powers though not specifically mentioned anywhere in the Act or the Rules framed thereunder. In that view of the matter the mere fact that there is no specific provision anywhere in the Act or the Rules framed thereunder regarding the direction to be given in respect of the deposits of the amounts awarded in the accident claim cases cannot, in our considered opinion, debar the Tribunal from directing that the amount awarded shall be kept

in deposit to safeguard the interest of the person in whose favour the amount is awarded. After all, the paramount consideration in such cases is to safeguard the interest of the claimant and the Tribunal cannot abdicate that responsibility on the ground that it may lead to a sort of thinking in the mind of litigant public that of late the courts have started to engage in acts of mobilising resources of some of the institutions.

6. The claimants in whose favour the award is made could be broadly classified into two categories. The first is the case of minors or persons of unsound mind or idiots, etc., who are under a legal disability. In the second category come the cases where, though the person is under no such legal disability, is in the opinion of the court not capable of safeguarding his or her interest and, therefore, certain direction should be given for safeguarding her/his interest in the amount awarded. So far as the amount awarded in favour of a minor or a person of unsound mind is concerned, Rule 6 of Order 32, Civil Procedure Code, specifically enjoins that the leave of the court is a must for a next friend or guardian to receive the money awarded in favour of such a person. Various enactments including the CPC place the court on a very high pedestal than even the natural father of the minor. Rule 7 of Order 32 of the Civil Procedure Code, is one such which disentitles the next friend or guardian to enter into an agreement or compromise on behalf of a minor without the leave of the court. Section 8 of the Hindu Minority and Guardianships Act enjoins the guardian to seek the leave of the court for alienating the property of the minor. It is quite unnecessary to multiply these instances which place the court on a much higher pedestal than even that of natural father of the minor and mandate even the natural father to seek the leave of the court for entering into a compromise or for alienating the property. Therefore, there could be no different conclusion on the aspect that in the case of a minor the Tribunal which awards the amount is duty-bound to give direction regarding the deposits to be made and the proper utilization of the amount awarded in favour of the minor.

7. There may be other category of claimants who may not be under any kind of legal disability, but having regard to the facts of the case it may be a case where the person in whose favour the award has been passed may not be in a position to protect his interest and if the amount is ordered to be given to the said claimant, it may not be in the interest of the claimant, for such person''s innocence or lack of experience of handling such heavy amounts may be exploited to that person''s detriment by unscrupulous persons who have some kind of hold on him. The guidelines given by A.M. Ahmadi, J. (as he then was) in Muljibhai and Another Vs. United India Insurance Co. Ltd. and Others, have been reiterated by Venkatachaliah, J. (as he then was) in the unreported decision in Jayamma''s case referred to already as hereunder:

One unfortunate aspect of this case is that the claimants have not had the benefit of a substantial part of the compensation, owing to the alleged dishonest conduct on the part of the first appellant''s own brother. Since he is not a party here, we cannot go into and pronounce on the truth of these allegations. But, from the information elicited in a number of appeals where the claimants have been illiterates or semi-literates and where the corpus of the compensation has been released to them because they are sui juris, they have not been able to account for the moneys drawn by them. Obviously, owing to the influence of unscrupulous persons who wait to exploit such occasions, the claimants have made unwise investment or have outright lost or wasted the funds. The funds particularly in fatal accidents actions are intended to provide dependency to the widows and minor children for quite a substantial period in the future. It is appropriate, therefore, to issue some guidance to the Tribunals emphasizing the importance of ensuring the safety of the funds particularly in the hands of young and illiterate persons who do not have sufficient wisdom and experience of worldly affairs so as to be able to protect their own interests. If the Tribunals bear these general salutary principles, a good deal of the misery of these unfortunate victims of road accidents could be alleviated.

In regard to the general guidance of the Tribunal, we think, we cannot do better than recalling, in respectful agreement, the observations made by a Division Bench of the Gujarat High Court in Muljibhai and Another Vs. United India Insurance Co. Ltd. and Others, Learned Judges observed:

Having regard to the fact that day in and day out thousands of rupees are paid by way of compensation to various categories of claimants, we think that before we part, we may indicate a few broad guidelines which the Claims Tribunals may follow while disposing of claim applications arising under the Motor Vehicles Act, 1939, to scotch complaints of misapplication of the compensation money:

(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor invested in long-term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;

(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw, etc., to earn a living the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money;

(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out in (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding any existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal, in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him, thinks it necessary to so order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary and the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, should permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long-term fixed deposits is made it should be on condition that the bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency to meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be liquidated.

(Emphasis added)

8. These guidelines are not exhaustive but are merely illustrative.

9. We are in respectful agreement with these observations made by the Division Bench in Jayamma''s case.

10. In the result, we overrule the decision of the learned Judge in Malumbi Vs. Albin Abdul, and hold that the Tribunals have the power to make appropriate orders regarding making of deposits of the amounts awarded in favour of the claimants and dismiss these appeals.

11. The learned Counsel for the appellant submitted that as M.F.A. Nos. 2407 and Appeal dismissed. 2408 of 1991 were presented u/s 173 of the Motor Vehicles Act, 1988 an amount of Rs. 25,000/- each has been deposited in these appeals. We direct that the said amount shall be transferred to the Tribunal for disbursement in accordance with our order.

