
(2015) 07 BOM CK 0031
In the Bombay High Court
Case No : First Appeal No. 11 of 2010

P. Beenitha

APPELLANT

Vs

Jose C.R. Pires and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Motor Vehicles Act, 1988 — Section 163-A, 166

Citation : (2015) 5 ABR 389

Hon'ble Judges : K.L. Wadane, J

Bench : Single Bench

Advocate : A.R. Kantak, for the Appellant; M. Salkar, Government Adv.,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.L. Wadane, J—The present appeal is preferred by the original claimant against the judgment and award dated 20.10.2009 passed by the learned Presiding Officer of the Motor Accident Claims Tribunal, Panaji, in Claim Petition No. 6/2004 by which the learned Presiding Officer has dismissed the Claim Petition. The parties are referred to their original status.

2. The brief facts of the case may be stated as follows:

"The claimant/appellant was 6 1/2 years old student residing at Government Quarters at Altinho, Panaji. On the day of the accident i.e. on 17.08.2000 at around 01.30 p.m. the claimant/appellant had returned from the school along with other children and was on the side of the road, at that time the respondent No. 1 who was driving the vehicle involved in the accident gave dash to the claimant/appellant. The motor vehicular accident occurred due to the rash and negligent driving of the vehicle i.e. motor vehicle bearing registration No. GA-OL-G-0640 belonging to the respondent No. 2. The accident occurred due to the rash and negligent driving of the vehicle by the respondent No. 1."

3. After the accident, the claimant/appellant was initially taken to the private doctor and then to the Goa Medical College for medical treatment. During the medical treatment, it was revealed that the claimant/appellant received fracture injury to her neck in addition to other injuries.

4. Earlier, the claimant/appellant had filed Claim Petition No. 84/2000 in connection with very same accident under Section 163-A of the Motor Vehicles Act and the learned Presiding Officer of the Motor Accident Claims Tribunal by its judgment and award dated 16.09.2003 dismissed the petition on the ground that the claimant/appellant has not suffered permanent disability. Therefore, she is not entitled for the compensation.

5. The claimant/appellant did not prefer any appeal against the judgment and award passed in Claim Petition No. 84/2000 but filed a fresh petition under Section 166 of the Motor Vehicles Act bearing Claim Petition No. 6/2004. The learned Presiding Officer of the Motor Accident Claims Tribunal, has dismissed the petition mostly on the ground that the subsequent petition i.e. Claim Petition No. 6/2004 was hit by the provisions of Section 11 of the Civil Procedure Code. Hence, the present appeal.

6. I have heard the arguments of Mr. A.R. Kantak, learned counsel appearing for the claimant/appellant and Mr. M. Salkar, learned Government Advocate appearing for the respondents. During the course of the arguments, Mr. Kantak, learned counsel appearing for the claimant/appellant has argued that even after the dismissal of the petition under Section 163-A of the Motor Vehicles Act, there is no bar under any law to file petition under Section 166 of the Motor Vehicles Act. Therefore, the petition under Section 166 of the Motor Vehicles Act was maintainable.

7. As against this, Mr. Salkar, learned Government Advocate appearing for the respondents has argued that the subsequent petition is barred by principle of res judicata as the substantial question/issue involved in the petition has already been decided in the earlier petition. Therefore, the learned Presiding Officer has rightly rejected the petition.

8. With the help of the learned counsel appearing for both the parties, I have gone through the judgments passed in the earlier Claim Petition as well as the Claim Petition under Section 166 of the Motor Vehicles Act. I have also gone through the records. Considering the arguments advanced by both the parties, the following point arises for my determination.

9. It is an admitted fact that the claimant/appellant met with an accident due to the driving of the vehicle by the respondent No. 1 and owned by the respondent No. 2. It is also an admitted fact that the claimant/appellant had filed earlier petition under the provisions of Section 163-A of the Motor Vehicles Act and in that petition, the learned Presiding Officer had framed three issues namely:

"(1) whether the claimant proves that the accident occurred on 17.08.2000 at

about 1.30 p.m.?

(2) Whether the claimant proves that she suffered fracture (left) and (right) neck of humerus, fracture on left hand, abrasions and injury on head on account of the said accident?

(3) Whether the claimant proves that she is entitled for a total compensation of Rs. 75,000/- on account of the accident?"

10. The learned Presiding Officer has recorded his affirmative findings to the issue Nos. 1 and 2 and negative findings to the issue No. 3. The observations of the learned Presiding Officer on issue No. 3 read thus:

"A bare reading of Section 163-A would show that the claimant is entitled for compensation under this Section only in case of a death or permanent disablement due to the accident arising out of use of motor vehicle. In this particular case it is admitted fact that the claimant has not sustained any permanent disability. Therefore, ex facie it appears that the claimant is not entitled for any compensation."

Further, it is an admitted fact that the claimant/appellant has not preferred any appeal against the findings recorded by the learned Presiding Officer who has decided the petition under Section 163-A of the Motor Vehicles Act. Without filing an appeal, the claimant/appellant has filed a fresh petition under Section 166 of the Motor Vehicles Act based upon fault liability.

11. It is material to note that the issue relating to the permanent disability has already been decided by the learned Presiding Officer and the negative findings were recorded, still the claimant/appellant under the provisions of Section 166 of the Motor Vehicles Act, has filed petition for compensation on account of permanent disability. Therefore, in my opinion the things which are already decided cannot be decided again and again in the subsequent proceedings.

12. Section 11 of the Civil Procedure Code deals with res judicata which expressly prohibits any Court from trying any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation VII provides that the provisions thereof shall apply to a proceeding for the execution of a decree and references in this Section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII reads thus:

"An issue heard and finally decided by a Court of limited jurisdiction, competent

to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised"

Considering the requirement of the application of this principle, the question which would be at large is whether the proceedings under the Act could be qualified as a suit and whether Civil Procedure Code applies to the proceedings under the Act vis-?-vis rules framed under the Act and applicable in the State of Goa.

13. So looking to the short controversy, I am of the opinion that the things which were already adjudicated by the competent Court cannot be adjudicated in the subsequent suit. Therefore, the subsequent petition under Section 166 of the Motor Vehicles Act is barred by principle of res judicata. I have gone through the reasons recorded by the learned Presiding Officer, from which it appears that the learned Presiding Officer of the Tribunal has rightly dismissed the petition. Hence, there is no substance in the present appeal. As such, the appeal stands dismissed. However, no order as to costs. The appeal stands disposed of accordingly.