

(2008) 11 AHC CK 0024
In the Allahabad High Court

Regional Manager, U.P. State Road Transport Corporation

APPELLANT

Vs

Compotar

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Road Transport Corporations Act, 1950 — Section 3

Citation : (2009) 2 AWC 1111

Hon'ble Judges : V.M. Sahai, J;Ran Vijai Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.M. Sahai and Ran Vijai Singh, JJ.—This appeal u/s 173 of Motor Vehicles Act, 1988 (In brief the Act, 1988) has been filed by Regional Manager, U.P. State Road Transport Corporation, Agra challenging the award of the Motor Accident Claims Tribunal, Mathura dated 16.1.2007.

2. The brief facts are that an accident took place on 24.12.2000 at 5.30 p.m. with Bus No. UP-80/E-9852 which hit Moped on which the claimant and his friend were travelling. Due to injuries suffered in the accident the right hand of the claimant was amputated and the claimant filed the claim petition u/s 166 of the Act claiming Rs. 15,00,000 as compensation alongwith 12% interest for the permanent disability suffered by him. The claim petition was contested by the appellant. The Motor Accident Claims Tribunal recorded a finding that the accident took place due to rash and negligent driving of the driver of the Bus. It further held that insurer of Moped was not necessary party. After considering the facts and circumstances of the case the Tribunal assessed the loss of the income and awarded Rs. 8,11,351 compensation alongwith 6% interest.

3. When the appeal was filed it was admitted on 19.4.2007 and a conditional stay order was passed by a Division Bench of this Court. Feeling aggrieved by the order dated 19.4.2007 the appellant filed SLP (Civil) No. 25771 of 2007 which was renumbered as Civil Appeal No. 1868 of 2008 which has been disposed by

the Apex Court by the following order:

...Tribunal awarded compensation of Rs. 8,11,351 alongwith Interest at the rate of 6% from the date of filing of the claim petition till the date of actual payment. While admitting the appeal the High Court, according to the appellant should not have directed deposit of the entire amount and should not have permitted the claimant to be paid the amount of deposit.

Notice has not yet been issued in this matter but we feel that the impugned order of the High Court is practically unreasoned and no reason has been indicated as to why the High Court felt that the amount was to be paid to the claimant on deposit. Therefore, we direct the High Court to reconsider the matter and pass fresh order.

We have passed this order to avoid unnecessary delay and Inconvenience to the parties.

4. We have heard Shri Samir Sharma for the appellant and Shri B. P. Verma learned Counsel appearing for respondents. The learned Counsel for the claimant/respondent Shri B. P. Verma has raised a preliminary objection that the appeal filed by the Regional Manager, U.P. State Road Transport Corporation, Agra is not maintainable. The matter has been listed today for orders. With the consent of counsel for the parties, we have taken up this appeal for final hearing of the preliminary objection raised by learned Counsel for the respondent.

5. Learned Counsel for the claimant/respondent has urged that Regional Manager, U.P. State Road Transport Corporation, Agra had no authority to file an appeal and the appeal could only be filed by U.P. State Road Transport Corporation. On the other hand Shri Samir Sharma learned Counsel for the appellant has urged that since Regional Manager, U.P. State Road Transport Corporation, Agra was impleaded as party to the claim petition, therefore, the appeal filled by the appellant is maintainable. He has further urged that before the Apex Court, U.P. State Road Transport Corporation through the Regional Manager, Shajadi Mandi, Gwalior Road, Agra had filed a SLP (civil) challenging the order dated 19.4.2007, therefore, the appeal filed by appellant has to be treated to have been filed by U.P. State Road Transport Corporation and is maintainable. He urged that he may be permitted to amend the array of appellant.

6. The first question is whether an appeal filed before this Court by the Regional Manager, U.P. State Road Transport Corporation is maintainable. It is not disputed that the U.P. State Road Transport Corporation had been established u/s 3 of the Road Transport Corporation Act, 1950 (in brief the Act, 1950).

Section 4 of the Act, 1950 is extracted below:

4. Incorporation. -- Every Corporation shall be a body corporate by the name notified u/s 3 having perpetual succession and a common seal, and shall by the said name sue and be sued.

7. From a plain reading of Section 4 it is clear that the U.P. State Road Transport Corporation can sue and be sued in its own name through its Managing Director in view of Section 13 read with Section 15 of the Act, 1950. The Act, 1950 does not permit other officers to represent the U.P. State Road Transport Corporation.

8. Similar questions have arisen with regard to Union of India as to whether Union of India can sue and be sued in the name of their officers. The Apex Court in *Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another*, has held in paragraphs No. 6 and 7 as below:

6. It cannot be disputed that the appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of the Union. The appellant challenged that order. Any order which can be passed by any Court would have to be enforced against the Union. The General Manager or any other authority acting in the Railway Administration is as much a servant of the Union as the appellant was in the present case.

7. The Union of India represents the Railway Administration. The Union, carried administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a necessary party. The petitioner was rightly rejected by the High Court.

9. Almost similar question with regard to State came up before the Apex Court in *Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others*, . It was held that in view of Article 300 of the Constitution of India, the Government of India and also the Government of State may sue or be sued by the name of Union of India or by the name of State respectively. The Apex Court had also considered the provisions of Section 79 of the CPC and Rule 1 of Order XXVII, C.P.C. and held as under:

10. A plain reading of Section 79 shows that in a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, in the case of the Central Government, the Union of India and in the case of the State Government, the State, which is suing or is being sued.

11. Rule 1 of Order XXVII, as mentioned above, deals with suits by or against the Government or by officers in their official capacity. Rule 1 of Order XXVII, C.P.C. says that in any suit by or against the Government, the plaint or the written statement shall be signed by such person as the Government may by general or special order appoint in that behalf and shall be verified by any person whom the Government may so appoint.

10. The U.P. State Road Transport Corporation which is body Corporate by the

name notified u/s 3 read with Section 4 of the Act, 1950 can sue and be sued in its own name through the Managing Director of the Corporation. The other officers of the Corporation, who may be holding various positions in the Corporation are not a juristic person and the Corporation could not sue or be sued through them. It is true that the officers of the Corporation can be sued in their personal capacity. The officers of the Corporation can be made parties to the suit, claim petition and writ petition alongwith U.P. State Road Transport Corporation through its Managing Director as party, then the claim petition etc., would be maintainable as ultimately the liability to pay compensation or compliance of the orders passed by the Courts would be of the Corporation and officers cannot be held liable to pay compensation in their personal capacity. Therefore, we are of the considered opinion that the appeal filed by the Regional Manager, U.P. State Road Transport Corporation, Agra before this Court is not maintainable.

11. The next argument of learned Counsel for the appellant is that since Regional Manager. U.P. State Road Transport Corporation was impleaded as party to the claim petition the appeal filed by the Regional Manager is maintainable.

12. We have gone carefully through the Act, 1988. It does not provide who would be respondents/ opposite parties to the claim petition. Section 169 lays down the procedures and powers of the claim Tribunals it provides that subject to the rules which may be made the procedure to be followed would be summary procedure as is thought fit by the Tribunal.

13. Section 169(2) gives power of civil court to the Tribunal" and provides that the claims Tribunal shall be deemed to be a civil court. Therefore, the Order I, Rule 3, Code of Civil Procedure, 1908, would apply and in a claim petition filed u/s 166 of the Act, 1988, the owner of the vehicle and the insurer of the vehicle, involved in the accident, would be necessary parties. Rule 204(1) of the U.P. Motor Vehicle Rules, 1998 provides that every application for payment of compensation made u/s 166 shall as far as possible be made in Form SR-48. In Form SR-48 under paragraph 17 name and address of the owner of the vehicle and in paragraph 18 name and address of the insurer of the vehicle has to be mentioned. Under Rule 207 of the Rules the claims Tribunal is required to send notice to the owner of the Motor Vehicle involved in the accident and its insurer, with a copy of the claim application intimating of the date on which it would hear the application. It shall further call upon the parties on that date to produce any evidence, which they may like to adduce.

14. From reading of Rule 3 of Order I, C.P.C, with Rules 204 and 207 of the Rules, it is clear that the owner of the vehicle and insurer of the vehicle, are necessary parties to a claim petition. The Regional Manager, U.P. State Road Transport Corporation, Agra is not owner of the Bus involved in the accident. The owner of the Bus is the U.P. State Road Transport Corporation, therefore, the appeal ought to have been filed by the U.P. State Road Transport Corporation through its Managing Director and the appeal filed by the Regional Manager who

is simply an officer of the Corporation is not maintainable.

15. The last argument of the learned Counsel for the appellant is that before the Apex Court SLP was filed by the U.P. State Road Transport Corporation through the Regional Manager, Agra and if there was any defect in the appeal filed by the appellant before this Court it stood cured before the Apex Court.

16. We have carefully examined this aspect, and we have gone through the array of parties, as mentioned in the order of the Apex Court. It appears to us that the SLP (Civil) No. 25771 of 2007 was filed by the appellant before the Apex Court without bringing to the notice of the Court that the appeal u/s 173 had been filed before this Court by the Regional Manager, U.P. State Road Transport Corporation and not by the U.P. State Road Transport Corporation. The appellant had not filled any application before the Apex Court seeking permission or leave to file the appeal in the name of U.P. State Road Transport Corporation nor any such application has been brought on record by the appellant, because if such a permission would have been granted by the Apex Court then U.P. State Road Transport Corporation through its Managing Director would have been impleaded as appellant No. 2 before the Apex Court alongwith Regional Manager as appellant No. 1. This fact does not appear to have been disclosed by the appellant before the Apex Court. The defect in the appeal filed -by the appellant before the Apex Court, therefore, did not stand cured. U.P. State Road Transport Corporation had not sued the claimants in accordance with Section 4 of Act, 1950, hence it would not have the effect of amending the array of appellant in the appeal which is pending before this Court. The request made by the learned Counsel for the appellant seeking permission to amend the array of the appellant has to be rejected as the appellants did not disclose material facts before the Apex Court.

17. Since we have already held that U.P. State Road Transport Corporation was the owner of the Bus but it had not filed any appeal u/s 173 of the Motor Vehicles Act, 1988 before this Court and the Regional Manager, U.P. State Road Transport Corporation, Agra was not the owner of the Bus and was not a juristic person and he could not sue or be sued on behalf of U.P. State Road Transport Corporation in view of Section 4 of the Act, 1950, we have no hesitation in holding that the appeal filed by the Regional Manager, U.P. State Road Transport Corporation, Agra, before this Court is. not maintainable.

18. Accordingly, the appeal is dismissed as not maintainable.

The amount of Rs. 25,000 "deposited by the appellants in this Court u/s 173 of the Motor Vehicles Act, 1988 shall be returned by the Registry to the appellant through their counsel by means of a bank draft within one month from today.

Parties shall bear their own costs.