
(2007) 03 MP CK 0098
In the Madhya Pradesh High Court

Saira Bano

APPELLANT

Vs

Bitthal Balu Godekar and Others

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Legal Services Authorities Act, 1987 — Section 20(3), 20(4), 20(5)

Citation : (2008) 4 MPHT 204 : (2008) 4 MPLJ 216

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

Facts giving rise to the present petition are that one Sheikh Saleem died in a road accident on 5-3-2004 while he was travelling in a truck along with the cleaner. Petitioner being widow of the deceased submitted Claim Case No. 8/2004 before the First Motor Accident Claims Tribunal, Seoni. Respondent No. 4 was mother of the deceased and respondents Nos. 5 and 6 were respectively sister and brother of the deceased. They, too, submitted Claim Case No. 14/2004 for compensation. Both the cases were pending before the First Additional Motor Accident Claims Tribunal, Seoni. They were taken up in Lok Adalat wherein the petitioner gave her consent for compromise at a sum of Rs. 5 lacs. The Lok Adalat passed its decision directing the respondent No. 2 to pay sum of Rs. 5 lacs towards compensation within a period of three months from the date of award. It has been further mentioned in the award that the petitioner as well as respondent Nos. 4 to 6 would be entitled to equal share in the amount of compensation.

Thereafter, the petitioner vide application dated 6-8-2005 stated before the learned Claims Tribunal that she had accepted the amount of compensation of Rs. 5 lacs for herself and the same could not have been shared in equal proportion with respondent Nos. 4 to 6. It has been further stated that the

respondent No. 4 is aged 55 years, whereas, the petitioner is a widow, aged 27 years. She does not intend to get remarried. As regards respondent No. 5, it has been stated that she would be married in near future and, likewise, respondent No. 6 being the major son of deceased, is doing his own job. Accordingly, the petitioner has submitted that the apportionment of the compensation in equal shares would not be proper and the same was never consented to by her before Lok Adalat. Accordingly, a prayer was made for making division of amount of compensation in a proper manner.

Respondent Nos. 4 to 6 refuted the allegations of the petitioner. It has been specifically pleaded in Paragraph 8 of the reply that the Life Insurance Corporation Branch, Seoni, made payment of the insurance amount to the respondent No. 4 being nominee and out of the same, half of the amount has been paid to the petitioner. It has been further stated that the petitioner would be remarrying in near future which is not prohibited under Muslim Law.

Learned Tribunal vide its order dated 13-1-2006 contained in Annexure P-5, dismissed the application on the ground that there is no typographical or clerical error in the award dated 16-7-2005 and no review/ recalling is warranted in the facts and circumstances of the case.

Shri Naman Nagrath, learned Counsel submitted that the petitioner had given consent at Rs. 5 lacs as compensation merely for herself and the other respondents, namely, respondent Nos. 4 to 6 cannot be given a share from it. Secondly, he submitted that the respondent Nos. 4 to 6 were not present when the award was passed and, therefore, the award is vitiated on account of their absence.

Shri Dinesh Kaushal and Varun Kumar, learned Counsels appearing for the Insurance Company, contended that the amount has been rightly quantified at Rs. 5 lacs and the apportionment of the money amongst the claimants is a dispute inter-se between them. However, the burden on the Insurance Company cannot be enhanced after the petitioner gave her consent for Rs. 5 lacs. It has been stated by them that the petitioner did not restrict her consent in receiving the amount for herself only. On the other hand, on the consent having been given by the petitioner, the amount of compensation has been rightly quantified at Rs. 5 lacs and no fault can be found in fixing the amount at the said figure.

Shri A.D. Mishra, learned Counsel appearing for respondent Nos. 4 to 6 supported the impugned order. He submitted that the money has been rightly apportioned between the claimants in equal proportion and no interference is warranted, moreso, because no fraud or malice has been alleged by the petitioner.

I have considered the submissions and perused the record.

At the outset, it is necessary to reproduce the relevant Sub-sections (3), (4) & (5) of Section 20 of the Legal Services Authorities Act, 1987 which are as under:

(3) Where any case is referred to a Lok Adalat under Sub-section (1) or where a reference has been made to it under Sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the Court, from which the reference has been received under Sub-section (1) for disposal in accordance with law.

In view of the aforesaid provisions, a Lok Adalat is empowered to dispose of the case on the basis of compromise or settlement between the parties and is guided for this purpose by the principles of justice, equity, fair play and other legal principles. By virtue of Sub-section (5) of Section 20 of the said Act, if, no compromise or settlement is arrived at, the Lok Adalat is obliged to return the record of the case to the Court from which the reference has been received by the Lok Adalat for disposal in accordance with law.

I requisitioned the original record of the MACT in Claim Case Nos. 14/04 and 8/04 which included the order of Lok Adalat dated 16-7-2005, which clearly reveals that the petitioner gave her consent for a settlement at Rs. 5 lacs. This has been mentioned by handwritten sentence. It is followed by typed order of the MACT as Lok Adalat which is in two Paragraphs. In Paragraph 1, the New India Insurance Company has been directed to pay a sum of Rs. 5 lacs to the applicants within a period of three months and in case of failure, interest @ 9% per annum has been made payable. In Paragraph 2, it has been mentioned that the applicants (i.e., of Case Nos. 8/04 and 14/04) would be entitled to equal share in the amount of award. Petitioner by way of application before the Trial Court as well as before this Court has objected to second Paragraph of the order of Lok Adalat (Annexure P-7) on the ground that she had not consented for equal apportionment of the amount of compensation amongst the claimants and no settlement was arrived at about equal apportionment before Lok Adalat. The other private claimants being absent before Lok Adalat, there could not have been any settlement about apportionment in the Lok Adalat. Her application in this respect has been dismissed by the learned First Addl. District Judge Seoni (MACT), on the ground that no error of calculation or of typographical nature is found in the impugned order.

After perusal of the record in the light of Sub-sections (3), (4) & (5) of Section 20 of the Legal Services Authorities Act, 1987, it is clear that no compromise/settlement is on record, which may establish that the petitioner had consented for equal apportionment of amount of compensation amongst the claimants. He

consent as revealed in Annexure P-7 is merely to the effect that she was prepared for settlement before Lok Adalat at a sum of Rs. 5 lacs. Presence of other claimants has not been marked in Annexure P-7, which contains signature of the petitioner alone as a party. Even in the order Annexure P-5, passed on the application for review/recall, the learned Presiding Judge of First MACT, Seoni, has not given a finding that other claimants were present and a compromise/settlement was arrived at for equal apportionment of the amount of compensation amongst the claimants. Thus, as regards the apportionment of the amount of compensation amongst the claimants, the learned MACT, could not have passed an order of apportionment in equal share without the consent of the petitioner. Such a consent is neither on record nor is even recorded in the order of Lok Adalat (Annexure P-7) nor in the impugned order (Annexure P-5).

The order on the basis of a compromise/settlement before the Lok Adalat shall be guided by the principles of justice, equity, fair play and other legal principles as mandated in Sub-section (4) of Section 20 of the said Act. u/s 168 of the Motor Vehicles Act, 1988, a Claims Tribunal while passing award is obliged to determine the amount of compensation which appears to it to be just and specify the person or persons to whom compensation shall be paid and, obviously, in case of more than one claimant, the Claims Tribunal is required to specify the amount which is payable to each claimant separately. The amount of compensation payable under the Motor Vehicles Act, 1988, is not guided by Law of Succession, but it would depend upon degree of dependency of claimants. The claimants in the present petition are of different categories. Petitioner No. 1 is a young widow aged 27 years, whereas, respondent No. 4 is mother aged 55 years. Respondent No. 5 is a maiden sister of the deceased who may get married in near future. Respondent No. 6 is major son of the deceased who may get a job in near future.

Thus, without taking all the necessary factors into consideration, it cannot be said that the learned Lok Adalat while making an order of equal apportionment of the amount of compensation amongst the claimants was guided by the principles of justice, equity, fair play and other legal principles. Obviously, the term "other legal principles" will include the degree of dependency which is an important factor for determining the apportionment. The Apex Court in the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, has observed in Paragraph 13 that "it is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid." It obviously includes the specific share of each claimant in the amount of award which obviously can be said to be just only when the degree of dependency, span of life and other relevant factors are taken into consideration while determining the apportionment.

Shri A.D. Mishra, learned Counsel appearing for respondent Nos. 4 to 6, contended that an order of Lok Adalat cannot be legally challenged in the

absence of fraud or mala fide. Reliance by him on Jitendra Singh Thakur Vs. Meera Prasad and Another, , is of no avail, because the petitioner has not challenged the order of Lok Adalat on the allegation of mala fide or fraud but has disputed the jurisdiction of Lok Adalat on the ground of absence of consent with regard to apportionment of the amount of compensation. A Lok Adalat u/s 20 (3) of the Legal Services Authorities Act, 1987, is empowered to decide a case on the basis of a compromise or settlement between the parties. This jurisdiction is liable to be exercised only when a compromise or settlement is arrived at between the parties and which is in consonance with the principles of justice, equity, fair play and other legal principles. Thus, existence of compromise or settlement between the parties is sine qua non for exercise of powers by Lok Adalat. In case of absence of compromise or settlement, the Lok Adalat is obliged to return the record of the case to the concerning Court for disposal in accordance with law. Thus, the principles laid down in the case of Gujarat State Road Transport Corporation (supra) cannot be invoked.

In the case of P.T. Thomas v. Thomas Job (2005) 6 SCC 478, it has been observed by the Supreme Court that an award of Lok Adalat is as equal and on at par with a decree on compromise and will have the same binding effect and be conclusive. In the present case, the question involved is that whether a Lok Adalat has a jurisdiction to pass a decree on a point on which the parties have not arrived at a compromise or settlement. The answer, obviously, is negative and, accordingly, the case of P.T. Thomas (supra) has no applicability.

Moreover, the respondent No. 4 has already stated in Paragraph 8 of reply that half of the amount deposited by the Life Insurance Corporation has been paid to the petitioner. Grant of 50% of the amount of life insurance to the petitioner clearly suggests that degree of dependency of the petitioner is different than that of other respondents and is not equal. Effect of this aspect has also not been taken into consideration.

In the result, the petition stands allowed. The direction of equal proportionment contained in Paragraph 2 of Annexure P-7 is, hereby, set aside. Simultaneously, the order contained in Annexure P-5 of the learned First MACT, Seoni is, also set aside. It is further directed to decide the apportionment of the amount of compensation of Rs. 5 lacs awarded as compensation by the Lok Adalat amongst the claimants, in accordance with law afresh. No order as to costs.