
(2011) 08 CAL CK 0048
In the Calcutta High Court
Case No : FMAT No. 003 of 2010

Shri R. Karuppaiah

APPELLANT

Vs

Smt. S. Ratnamaniamma and Another

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2011) 08 CAL CK 0048

Hon'ble Judges : Prabhat Kumar Dey, J; Amit Talukdar, J

Bench : Division Bench

Advocate : KMB Jayapal, for the Appellant; Tulsi Lal, for the Respondent

Final Decision : Dismissed

Judgement

Amit Talukdar, J.—Logistically the Tribunal was correct. But if we see it from the angle of just decision it is somewhat porous. The Tribunal returned an award on the basis of the claim petition of Respondent No. 1 directing the Appellant to extinguish the said award as the vehicle owned by him was not driven by a driver having valid licence. From the point of view of logistic, the award of the Tribunal cannot be touched as it is otherwise based on sound reason and is the result of superb appreciation of the evidence and materials on record. But porous to the extent it has concluded on the basis after hearing the claimant (Respondent No. 1) and the Insurance Company (Respondent No. 2) and not the Appellant upon whom the award was foisted.

2. Mr. Jayapal, Learned Counsel for the Appellant has assailed the award on the said ground, as he was of the view had he been given an opportunity to rebut the contents of Exts. A and B i.e. the details from the RTO, Chennai that no licence was issued in favour of Marimuthu the driver the table could have been perhaps turned. Shri Jayapal, Learned Counsel for the Appellant further took us through the minutes of the proceeding before the Learned Tribunal (MACT Case No. 13 of 2003). Inviting our attention to Order No. 13 dated 25.10.2005 Mr. Jayapal submitted that date was fixed on 08th November, 2005 for filing WS by

the Appellant (OP No. 2). On the said dated (8.11.2005) as reflected from the Order No. 14 since no step was taken by the Appellant he was directed to show cause as to why the proceeding would not move ex parte. Mr. Jayapal submitted by way of referring to Order No. 15 dated 20.12.2005 although there was prayer for adjournment made on his behalf the case could not be heard as the Court was vacant on that date. He submitted that before taking the harsh step by Order No. 16 dated 16.2.2006 when the Tribunal proceeded with the case ex parte although no show cause was filed another opportunity could have been given. He has questioned the entire judgment and order under appeal on the aforesaid ground.

3. Mr. Tulsi Lall, Learned Counsel for the Insurance Company has submitted that even though the Appellant was not admittedly heard while the proceeding was disposed of by the learned Tribunal he could not have any grouse in this regard as on the face of it the driver did not have valid licence on the date of the incident. Mr. Lall submitted that on the date of incident it has been proved Marimuthu the driver who was operating the vehicle of the Appellant did not have any valid licence and it is quite apparent from the report of the RTO, Chennai (Ext.A) that the licence which has been shown was never issued from the office of the said RTO. According to Mr. Lall, as the terms of the Insurance policy was in its breach by the Appellant, obviously the Insurance Company did not have any liability in this regard. He submitted that this question was taken as a preliminary point by him in his written objection in a point No. 11 (Page 9 of the Paper Book). Mr. Lall on the basis of the said submission was of the view that the Tribunal after considering the entire issue concluded that the Appellant was liable to pay the compensation and no case having been made out in appeal, it was liable to be dismissed.

4. It would be uncharitable to find fault with the Tribunal which has after recording its supporting reasons through Order No. 16 dated 16.2.2006 proceeded to hear the case ex parte. The Tribunal was absolutely within its domain to have done so. After all, reasonable opportunity was given by it to the Appellant but the same not having been availed perhaps out of exasperation the Tribunal proceeded ex parte.

5. Going by law it was quite all right. Adopting the method of justice it could have been nice in the event some more pro-active method could have been adopted by way of giving the Appellant one more chance, seeking the service of an Amicus or someone from the legal aid panel so that the voice of the Appellant did not go unheard. From a plain reading of Section 168 of the Motor Vehicles Act, 1988 it appears that "the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim... specifying the person or persons to whom compensation shall be paid...shall specify the amount which shall be paid by the insurer or owner... of the vehicle involved in the accident...."

6. In our reading of the provisions of Section 168 of the said Act, the phrase "..."

an opportunity of being heard, hold an enquiry..." and "... shall specify the amount which shall be paid by the insurer or owner" postulates that an opportunity of hearing is sine qua non for arriving at a conclusion in respect of a claim which is to be passed against the person or persons concerned. Otherwise if it is seen from a different angle a person or persons is visited with a liability to pay a compensation without affording him an opportunity of presenting his case. As such, the order under appeal in respect of the application made u/s 166 of the said Act has been rendered vulnerable.

7. Even at the cost of repetition we must be fair to the Tribunal that had we been in his position we may perhaps done the same thing and noting the inertia of the Appellant proceeded ex parte deeming that he has abandoned his case. But considering it from the pedestal of a first appeal we are of the view that the same if it was clothed with the veil of justice nothing could be perhaps better.

8. Accordingly, after sustaining the objection of Shri Lall we feel it would be now just justice in the event we dispose of the appeal in the following terms:

9. The Tribunal after appreciating the evidence and the other materials on record decided the amount of compensation at Rs. 86,800/-. Now, as felt earlier the decision of the learned Tribunal simply on the scope of Ext. A, B and D is required to re-visited. The evidence already on record need not be disturbed. Only the Appellant would be allowed to cross-examine the witnesses qua the value of Ext. A, B and D.

10. As a consequence of the same as we are sending the appeal on deemed remand the Insurance Company necessarily would be able to lead evidence in this regard to rebut the case of the Appellant and the Appellant may also be permitted to lead such evidence which the Tribunal may deem fit and proper on the above aspect only. With this direction the appeal stands disposed of.

11. Learned Tribunal is kindly requested to re-do the exercise as held hereinabove.