
(2006) 07 MP CK 0064

In the Madhya Pradesh High Court

Case No : M.A. No"s. 338 and 770 of 2003

Shubhra Saxena and others

APPELLANT

Vs

Ashok Kumar and another

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 9 Rule 9

Citation : (2006) 4 MPLJ 603

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Advocate : D.C. Dubey, for the Appellant; R.P. Gupta for Respondent No. 1 and Ku. Vandana Kekre, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jaiswal, J.

This appeal shall also govern the disposal of M.A. No. 770/03. Both the appeals are filed against the order dated 25-3-2003 passed by the Special Judge (NDPS) and Additional Motor Accident Claims Tribunal, Gwalior by which the claim petitions of the appellants are dismissed on the ground that no permission was obtained under Order 23 Rule 1 and in view of Clause (4) of Rule 1 of Order 23, the second claim petition is barred and dismissed the claim petitions of the appellants.

In M.A. No. 338/03, the learned Tribunal dismissed the Claim Case No. 7/03 and in M.A. No. 770/03, the learned Tribunal dismissed the Claim Petition No. 8/03.

In an accident occurred on 14-6-2001, the appellants in Claim Case No. 7/03 filed an application for grant of compensation on the death of husband of appellant No. 1. In Claim Case No. 8/03, appellant No. 5 Amita Saxena filed a claim for the injury received by her mother Smt. Shubhra Saxena. Earlier, two claim petitions were filed by Shri N. D. Singhal, Advocate. Later on, Shri Haswani, Advocate, on 30-9-2002 pleaded no instructions and further stated that

he does not want to prosecute the case and, therefore, the trial Court dismissed the claim petitions as not pressed. The earlier said two claim petitions were filed by appellant No. 1 against one Raju Sakhwar driver of Auto Rickshaw No. MP07/T 2036 and owner of the Auto Rickshaw Ramniwas Jatav and Insurer New India Assurance Company Ltd. Thereafter, she along with her daughters and sons filed the present Petition Nos. 7/03 and 8/03 against the owner and driver of Maruti Car No. MP07/E-2034 and the National Insurance Company Ltd. The trial Court by the order dated 25-3-2003 dismissed the claim only on the ground that earlier claim petition, which was filed against the Auto Rickshaw was dismissed as not pressed on 30-9-2002 and no permission was sought under Order 23 Rule 1, CPC for filing fresh claim petition in respect of the same cause of action, for which previous claim petition was filed.

The trial Court relied on the decision in the case of Dayachand vs. Kerabai, reported in 2000(II) MPWN 31. Learned Counsel for the appellants submits that the facts in the case of Dayachand (Supra) are quite different and distinct to the facts in the present case. He submitted that in that case, reliefs, which they already wanted to claim, have already been granted to them and, therefore, the Court dismissed their suit in exercise of power under Order 23 Rule 1 of CPC without making any comments. In the instant case, though the claim petition was filed in respect of the same cause of action, but against the Maruti owner and different Insurance Company; whereas, the earlier claim petition was filed against the Auto Rickshaw and different Insurance Com. and earlier claim was dismissed as not pressed and no proceedings were instituted in the earlier suits and, therefore, the trial Court committed an error in holding that the second suit is barred by reasons for provisions of Order 23 Rule 1 of Civil Procedure Code. He placed reliance to the decision of Calcutta High Court in the case of Mrs. L. A. Saunders vs. Land Corporation of Bengal Ltd., reported in AIR 1955 Calcutta 169, wherein it was held that the earlier suit was not withdrawn, but was dismissed for default under Order 9 Rule 9, CPC and, therefore, it was impossible to treat it as withdrawal under Order 23 Rule (1)(3). He also placed reliance on the decision of the Orissa High Court in the case of Bhagabat Jena and others vs. Gobardhan Patnaik and others, AIR 1983 Orissa 50, in which the Orissa High Court has held that under Order 23 Rule 1, the plaintiff has a right to withdraw his suit at any stage, but, that right is limited to the extent that it does not result in defeating a right which has already vested in the defendant. The object of Order 23 Rule 1, CPC is not to enable a plaintiff, after the rights of the parties have been adjudicated, to obtain an opportunity of commencing a fresh litigation in order to avoid the result of his previous suit.

In the instant case, the claim was filed against the autorickshaw owner and the Insurance Company where the said autorickshaw was insured. It appears that the accident was not caused by the said autorickshaw, but has been caused by maruti car and, therefore, the claimant withdrew the aforesaid claim petition and filed the claim against the maruti car owner and the Insurance Company with whom the car was insured. Thus, the parties against whom the claim earlier was

filed was different and the claim which has been filed arises out of a cause against the maruti car owner and the Insurance Company. The bar under Order 23 Rule 1, CPC applies only if the second claim petition is between the same parties as the first claim petition. Where the second claim is against a different respondents it is not barred under this rule (See *Albert Judah Judah Vs. Rampada Gupta and Another*, , AIR 1927 Bombay 87 and AIR 1928 All 689).

Earlier claim petition was dismissed as not pressed and- therefore, the second claim petition filed by the appellants against the respondents, who were not party to the earlier proceedings, is maintainable and the Claims Tribunal committed error in dismissing claim and, therefore, the impugned order passed by the trial Court is liable to be set aside.

In view of the above, the order dated 25-3-2003 passed in Claim Cases Nos. 7/03 and 8/03 are set aside. The appeals are allowed. The learned Claims Tribunal is directed to decide the claim on merits and in accordance with law. In the peculiar facts and circumstances of the case, there is no order as to costs.