

(2011) 11 RAJ CK 0077

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2197 of 2003

Smt. Savitri and Others

APPELLANT

Vs

The Motor Accident Claims Tribunalcum-District and Sessions
Judge, Jhunjhunu and Others

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 117
Motor Vehicles Act, 1988 — Section 165, 165(1), 166, 168
Rajasthan Motor Vehicles Rules, 1990 — Rule 10.2, 10.28

Citation : (2013) ACJ 1361

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mr. Justice Mohammad Rafiq

1. This appeal has been preferred by claimants against order dated 30.03.2003 of learned Motor accident Claims Tribunal, Jhunjhunu, in MAC Case No.112/2000, by which it has dismissed their claim petition on premise that earlier claim petition filed by them on same subject matter claiming same relief was dismissed as not pressed and therefore the second claim petition on same subject matter would not be maintainable.

2. Learned counsel for appellants has argued that there was no adjudication as far as merits of the case are concerned. Claimants did not press their claim petition, filed earlier, and same was dismissed because a compromise was arrived at between the parties. Pursuant to the compromise, vehicle owner agreed to pay to claimants a sum of Rs.1,00,000/- (Rupees one lac). The claimants even admitted the factum of compromise in their statements in the trial of driver of offending vehicle, in criminal case. However, subsequently the owner of the vehicle turn back from the promise and did not pay the agreed amount of Rs.1,00,000/- to claimants. Learned counsel argued that Rule 10.2 of

the Rajasthan Motor Vehicles Rules, 1990, has made a specific provision of Civil procedure Code, 1908 (for short, "the CPC"), applicable to proceedings before Motor Accident Claims Tribunal, however, Section 11 of the CPC has not been applied as such. Even otherwise, there can be no question of any res judicata as there was no adjudication on merits of claim petition. The claimants thus got it dismissed owing to aforementioned reasons. Learned counsel, in support of his argument, cited a judgment of this Court in Smt. Vimla Devi and Another Vs. Rajendra Kumar and Others 2003 (1) TAC 157 (Raj.) and submitted that in that case the first claim petition was dismissed due to absence of counsel and claimants filed a fresh claim petition rather filing an application for restoration, which was rejected as time barred. This court held that after deletion of limitation clause from Section 166 of the Motor Vehicles Act, 1988, the Tribunal was not justified in rejecting subsequent claim petition as not maintainable. Since, no limitation was prescribed for filing claim petition under statute, subsequent claim was not barred, more so when no part of Order VII, CPC was made applicable before the claim Tribunal. It is, therefore, prayed that the impugned order be set aside and the matter be remitted back to the Tribunal for adjudication of the matter on merits.

3. Per contra, learned counsel for respondent, owner as well as driver, opposed the appeal and argued that learned Tribunal has got the jurisdiction of a civil court, therefore, all those provisions, that are applicable to a civil court, would have to be applied to the proceedings of the Tribunal. A claim petition, which was earlier filed and dismissed not pressed, resulted in culmination of the proceedings thereof, and, on the same subject matter thereof, a fresh claim petition cannot be entertained. Learned counsel argued that res judicata even though incorporated in Section 117 of the CPC but on the principle of equity and therefore if the second claim petition on the same subject matter is allowed to be entertained, it would complicate the proceedings which have attained finality.

4. I have given my anxious and thoughtful consideration to rival submissions and perused the material on record.

5. Proceedings before Motor Accident Claims Tribunal can neither be said to be trial of a regular suit nor it can be as such held to be a court in the meaning of Civil Procedure Code; although, certainly it being a court, certain provisions of CPC have been applied to its proceedings by virtue of Rule 10.28 of the Rajasthan Motor Vehicles Rules, 1990. Section 165 of the Act of 1988 provides that a State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Section 166 of the Act, 1988, provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by the person who has sustained the injury, or by

the owner of the property or where death has resulted from the accident, by all or any of the legal representatives of the deceased, or by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be. Section 168 of the Act provides that on receipt of such application preferred u/s 166, the Claims Tribunal shall, after giving notice thereof to the insurer and, after giving the parties including the insurer, an opportunity of being heard, hold an inquiry into the claim. Thus, in the claim petition filed under the provisions of the Act of 1988, the proceedings are in the nature of an enquiry and not a regular trial of civil suit, therefore the concern legislature was required to make such rules which may decide the proceeding speedily, expeditiously and hustle free and free from procedural technicalities, applicable to a regular civil suit in a regular civil court. The Tribunal in the impugned order has also observed that the claimants have not disclosed any reasonable cause of filing second claim petition nor has been able to decide any precedent on the subject. That, in my view, cannot be a reason not to entertain the claim petition particularly when earlier claim petition was not adjudicated on the merits and it was dismissed as not pressed. Whether or not compromise was arrived at between the parties and whether pursuant to such compromise the impugned agreed amount to be paid, was actually paid to the claimants or partially paid, are all matters of evidence of the parties on those issues, in addition to the evidence on the claim petition on merits, can be allowed to be led by the claimants with liberty to the owner and driver to adduce evidence in rebuttal. The Act of 1988 being a beneficial legislation, the court has to, in a situation like this, take a pragmatic view of the matter rather than being too technical and, in the facts of this case, when it is clear that there was no adjudication on merits, the claimants cannot be left in lurch without any remedy.

6. In view of above discussion, the appeal is allowed. The impugned order of learned Tribunal is set aside. The matter is remanded back to the Tribunal with a direction to make a fresh adjudication of the matter on merits, in the light of aforesaid discussion and, pass final award within a period of one year from the date a copy of this order is produced before the Tribunal.

7. The parties are directed to appear before the Tribunal on 19.12.2011.