

(2001) 09 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 4706 of 1999

Subhash

APPELLANT

Vs

Kiran and Others

RESPONDENT

Date of Decision : 10-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 173

Citation : (2002) ACJ 2101

Hon'ble Judges : B.B. Vagyani, J

Bench : Single Bench

Advocate : R.R. Mantri, for the Appellant; Y.P. Pawar, V.N. Upadhye and D.V. Soman, for the Respondent

Final Decision : Dismissed

Judgement

B.B. Vagyani, J.—Heard learned advocate Mr. R.R. Mantri for the petitioner, learned advocate Mr. Y.P. Pawar, for respondent Nos. 1 to 3, learned advocate Mr. V.N. Upadhye, for respondent Nos. 4, 5 and 7 and learned advocate Mr. D.V. Soman, for respondent No. 6.

2. Petitioner is owner of the jeep No. MH 20-A 1293 which is duly registered as taxicab to carry passengers. The said vehicle was admittedly insured with respondent No. 6, i.e., United India Insurance Co. Ltd., Aurangabad, including the risk of life or bodily injury to its passengers and the driver. The insurance policy was valid up to 11.1.1994. The petitioner had employed duly licensed driver to ply the taxi as per the permit.

3. On 18.6.1993, the taxi was proceeding towards Sillod on Aurangabad-Jalgaon Road. A truck bearing No. MWP 1885 dashed against the taxi near Ganori Phata. At the relevant time, Budhan Khan was driving the truck which was owned by respondent No. 5. The truck was insured with respondent No. 7. On account of rash and negligent driving of the respondent No. 5, accident occurred in which the taxi driver died. Passengers in the taxi suffered injuries. Respondent Nos. 1

to 3, who suffered injuries, have filed claim petitions bearing Nos. 282, 305 and 309, all of 1993, before the Motor Accidents Claims Tribunal, Aurangabad. The Tribunal held that the drivers of both the vehicles involved in the accident were equally rash and negligent and allowed the claim petitions filed by respondent Nos. 1 to 3. The insurance company has been exonerated on the ground of breach of terms of policy. The Tribunal awarded Rs. 7,500 each to respondent Nos. 1 and 2 and Rs. 900 to respondent No. 3.

4. The petitioner, who is owner of the taxi, had filed review petitions before the Tribunal, however, the Tribunal dismissed the review petitions by order dated 31.7.1999. As the compensation awarded by the Tribunal is less than Rs. 10,000, appeal is barred u/s 173(2) of the Motor Vehicles Act and, therefore, the owner of the taxi has filed writ petition under Articles 226 and 227 of the Constitution of India.

5. Learned advocate Mr. R.R. Mantri submitted that the Tribunal has exonerated the insurance company on account of wrong approach. According to the learned advocate Mr. R.R. Mantri there was no breach of policy. If excess passengers were found in the taxi it would be at the most a breach of permit. This aspect has not at all been properly considered by the Tribunal and, therefore, the order of exoneration of the insurance company is liable to be modified as insurance policy was in force on the date of the accident. Therefore, the liability should have been imposed on the insurance company.

6. Learned advocate Mr. Mantri also submits that this court issued rule and, therefore, the question of maintainability of the writ petition in the light of Section 173(2) of the Motor Vehicles Act 1988 is not open to the respondents. In order to support his submissions, he has relied upon *Harishankar Ramswarup Jaiswal v. Commissioner of Prohibition and Excise Bombay* 1997 (1) Mh LJ 460 wherein this court while interpreting the powers under Article 226 of the Constitution of India has held that once the High Court chooses to entertain the writ petition and admits the same, then the defence of laches cannot be raised by the other side. It is further observed that it will be deemed that the court entertaining the petition and admitting the petition has ignored the laches. The court ultimately held that where there is patent injustice, the technical plea of laches or *res judicata*, etc., will not be allowed to defeat the petitioner's case.

7. On the other hand, learned advocate Mr. V.N. Upadhye and Mr. D.V. Soman, representing two different insurance companies, forcefully argued that when compensation awarded is less than Rs. 10,000, the appeal is not provided by Section 173(2) of the Motor Vehicles Act, 1988. In order to buttress their submissions, they heavily relied upon following cases:

(1) *Oriental Insurance Co. Ltd. Vs. Motor Accidents Claims Tribunal, Thalassery and Others*, .

(2) *National Insurance Co. Ltd. Vs. Vipul and Others*, .

(3) New India Assurance Company Limited, Mangalore Vs. The Member, Motor Accident Claims Tribunal, Udupi and others, .

8. I gave anxious consideration to the rival submissions made at the Bar. The short point that arises for consideration is as to whether it is proper to invoke jurisdiction under Articles 226 and 227 of the Constitution of India when correctness of the award is challenged wherein compensation awarded by the Motor Accidents Claims Tribunal is admittedly less than Rs. 10,000. The statute has created a bar with regard to maintainability of the appeal by virtue of Section 173(2) of the Motor Vehicles Act, 1988, when the compensation awarded by the Claims Tribunal is less than Rs. 10,000. The intention behind creating a bar is to attach finality to the award wherein the compensation is less than Rs. 10,000. With this intention, the bar is created. Under the circumstances, the powers under Article 226 or under Article 227 cannot be exercised to enable a party to widen the scope of his defence contrary to and in defiance of the provisions of law and the scheme of the law. No doubt, the powers under Article 226 of the Constitution can very well be exercised by the court in case of error of law apparent on the face of record or error of jurisdiction. In the case in hand, there is no error of law apparent on the face of record. The impugned award does not at all suffer from any jurisdictional error. Under the circumstances, it is not permissible to frustrate the scheme provided by law. If powers under Articles 226 and 227 of the Constitution of India are allowed to be exercised, then the entire scheme envisaged in Section 173(2) of the Motor Vehicles Act, 1988, will be defeated. If regard is had to the legal scheme with regard to conferment of finality to the awards, which are less than Rs. 10,000, it is not at all permissible to nullify the legal scheme provided u/s 173(2) of the Motor Vehicles Act, 1988. Therefore, powers under Articles 226 and 227 cannot be permitted to be invoked and are not to be exercised to perpetuate breach of law or breach of limits prescribed by law. The submissions of learned advocate Mr. V.N. Upadhye and Mr. D.V. Soman receive very strong support from the cases relied by them.

9. In case of New India Assurance Company Limited, Mangalore Vs. The Member, Motor Accident Claims Tribunal, Udupi and others, the single Judge of Karnataka High Court has held that powers under Article 226 of the Constitution cannot be allowed to be exercised to render statutory provision nugatory or redundant. In the case of National Insurance Co. Ltd. Vs. Vipul and Others, the single Judge of the High Court of Himachal Pradesh has held that order of the Tribunal granting compensation less than Rs. 10,000 cannot be challenged in a petition under Article 227. In case of Oriental Insurance Co. Ltd. Vs. Motor Accidents Claims Tribunal, Thalassery and Others, single Judge of Kerala High Court has held that the order of Tribunal awarding compensation less than Rs. 10,000 cannot be questioned in a petition under Articles 226 and 227 of the Constitution. It is held that statutory power cannot be circumvented by filing petition under Article 226 or Article 227 of the Constitution of India.

10. The case of Harishankar Ramswarup Jaiswal 1997 (1) Mh LJ 460, relied upon

by learned advocate Mr. R.R. Mantri cannot be pressed into service in order to defeat the legal scheme embodied in Section 173(2) of Motor Vehicles Act.

11. A reference with profit can be made to a case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, . It is held by the Apex Court that while exercising the jurisdiction under Article 226 of the Constitution due regard must be given to the legislative intent manifested by the provisions of a particular Act. The Apex Court has further held that even while acting in exercise of constitutional power under Article 226 of the Constitution of India, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve ends of law and not to transgress them.

12. After having considered the legal point involved in this writ petition, I am of the clear opinion that writ petition filed by the owner of the jeep is not maintainable in law.

13. In the result, writ petition stands dismissed. Rule discharged.