

(1987) 09 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 3341 of 1987

Syed Mohammed Umar

APPELLANT

Vs

The Sheriff of Bombay and Another

RESPONDENT

Date of Decision : 18-09-1987

Acts Referred:

Bombay City Civil and Sessions Court Rules, 1948 — Rule 245(1)
Bombay High Court (Original Side) Rules, 1980 — Rule 445, 451
Bombay Motor Vehicles Taxation Rules, 1959 — Rule 294, 294(1), 310
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 43, 132, 133, 144, 145
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1939 — Section 110, 110A, 110B, 110B(1), 110B(2)

Citation : (1988) ACJ 450 : AIR 1988 Bom 67 : (1988) 2 BomCR 487 : (1988) 2 BOMLR 487 : (1988) MhLj 16

Hon'ble Judges : Suresh, J;Shah, J

Bench : Division Bench

Advocate : A.A. Kudroli and T.J. Mendav, for the Appellant; A.S. Bobde, General and V.A. Gangal, Addl. Govt. Pleader, for the Respondent

Judgement

Shah, J.—This petition under Article 226 of the Constitution raises a question as to the interpretation of certain provisions of the Motor Vehicles Act, 1939 (hereinafter called "the Act") and the Rules framed thereunder viz. the Bombay Motor Vehicles Rules, 1959 (hereinafter called "the Rules"). The question raised is whether the Accidents Claims Tribunal can, either through the High Court or the City Civil Court at Bombay, or on its own, direct the Sheriff of Bombay to execute the award passed by it.

2. Briefly stated, the facts leading to the petition are as follows : The petitioner filed a claim petition before the Motor Accidents Claims Tribunal, Satara. The Tribunal passed an award in his favour on June 2, 1986, directing the Opponent in the claim application to pay to the Petitioner a sum of Rs. 35,000/-- as compensation together with future interest at the rate of Rs. 12 per cent per annum on that amount and costs. Since the Opponent had no property at Satara,

on the application of the Petitioner, the Motor Accidents Claims Tribunal, Satara, transferred the award to the City Civil Court at Bombay for execution as a money decree. The City Civil Court took an objection that since the original claim was for Rs. 1,00,000.00, the decree should be transferred to the High Court for executing the same. When the award was received by the High Court, the Prothonotary and Senior Master directed that award being in respect of compensation under the said Act, should be executed through the Motor Accidents Claims Tribunal, Bombay and accordingly forwarded the papers to the Tribunal at Bombay. The Tribunal at Bombay then issued the warrant of attachment under Order XXI, Rule 43 of the CPC and forwarded the same to the Sheriff, through the Prothonotary and Senior Master for execution. This warrant dated April 20, 1987, which was received by the Sheriff of Bombay was sent back by him to the Motor Accidents Claims Tribunal, Bombay pointing out that the awards passed by the Tribunal are not to be executed by the Sheriff either by virtue of the Act or the Rules framed there under and informed the Tribunal that the Sheriffs office will not execute the Award. In the circumstances, the Petitioner has filed this petition contending, inter alia, that the Sheriff was bound to execute the warrant of attachment as directed by the Tribunal. The Sheriff has filed his affidavit in reply contending, inter alia, that having regard to the provisions of the Act and the Rules framed there under, the Tribunal cannot direct the Sheriff to execute its warrant. He has also contended that the Sheriff of Bombay is an officer of the High Court and under the rules he has been authorised to serve and execute various processes. Warrants and arrest orders issued by the High Court and the City Civil Court in respect of suits filed in these Courts. It was also pointed out that the Sheriff of Bombay also executes the process issued by the Supreme Court and other High Courts as and when directed by the High Court and these processes are of purely judicial nature.

3. The short question, therefore, for our consideration is whether the Motor Accidents Tribunal is empowered in law to direct the Sheriff to execute its awards and whether the Sheriff was not justified in refusing to execute the warrant. It may be mentioned that during the pendency of the petition, an interim order was passed directing the Sheriff to execute the warrant in the instant case and the same has been executed. However, the question is of importance and needs to be considered as the same point is likely to arise in future.

4. Turning to the provisions of the Motor Vehicles Act, Section 110 deals with the constitution of the Claims Tribunal. Section 110 A prescribes the procedure for making an application for compensation before the Tribunal. Section 110B empowers the Tribunal to pass an Award determining compensation after giving the parties an opportunity of being heard and after holding an inquiry. Section 110C prescribed the procedure and powers of Claims Tribunals; This provision is in respect of the procedure to be followed by the Tribunal in the matter of holding an enquiry. Sub-section (1) provides that in holding any inquiry u/s 110B, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure, as it thinks fit. Sub-section (2) further

provides that the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed. "It is further provided that the Tribunal is deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Section 110D provides for appeals to the High Court. Then the relevant provision with which we are concerned is Section 110E. The said section runs as under:

"Where any money is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the money, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue."

Thus Section 110E provides for a machinery to execute the award passed by the Claims Tribunal. There is no other provision in the Act itself as regards the execution of the award passed by the Tribunal. However, u/s 111 A, the powers are conferred on the State Government to make Rules and it is, inter alia, provided that the State Government may make rules for the purpose of carrying into effect the provisions of Sections. 110 to 110E, and in particular, such rules may provide for the powers vested as a Civil Court which may be exercised by the Claims Tribunal.

5. In exercise of the powers conferred u/s 111A, the State Government has framed the rules known as the Bombay Motor Vehicles Rules, 1959. Rule 294 provides for the powers vested in Civil Court which may be exercised by the Claims Tribunal. It is this Rule read with Rule 310, it is urged by Mr. Kudroli, the learned Counsel for the Petitioner, support his contention that the Sheriff is bound to execute the warrants sent by the Tribunal to him for execution. Rule 294 runs thus:

"294 : Powers vested in Civil Court, which may be exercised by Claims Tribunal-

(1) Without prejudice to the provisions of Section 110C-

(a) every Claims Tribunal constituted by the State Government u/s 110 may exercise all or any of the powers vested in a Civil Court under the following provisions of the Code of Civil Procedure, 1908, in so far as they may be applicable, namely : --

Sections. 30,32, 34, 35, 35A, 75(a) and (c), 76,77, 94, 95, 132, 133, 144, 145,. 147, 149, 151, 152 and 153; and

(b) and subject to the provisions of Section 110E,-

(i) any Claims Tribunal constituted for Greater Bombay, where the amount of compensation awarded by it does not exceed Rs. 50,000/- shall have all the powers of the City Civil Court, and where such amount exceeds Rs. 50,000/ shall have all the powers of the High Court, for the purpose of execution of the award,

as if the award, is a decree for the payment of money made in a suit by the City Civil Court or the High Court, as the case may be;

(ii) any Claims Tribunal constituted for any area outside Greater Bombay shall have all the powers of the Court of Civil Judge (Senior Division) for the purpose of execution of any award for compensation made by it, as if the award is a decree for the payment of money made in a suit by such Court.

(2) For purposes other than those specified in Sub-rule (1), the Claims Tribunal may exercise all or any of the powers of Civil Court as may be necessary in any case for discharging its function under the Act and these Rules."

Rule 310 provides for the procedure to be followed by the Claims Tribunal in holding enquiry. In Sub-rule (1) are mentioned the various provisions of the CPC which will apply to the proceedings before the Claims Tribunal, and it, inter alia, includes the whole of Order XXI of the Code of Civil Procedure.

6. Relying on the aforesaid provisions, Mr. Kudroli contended that the execution of an award passed by the Claims Tribunal can be effected in two ways. The Claims Tribunal can send the award for execution to the Collector u/s 110E. It can also send it either to the City Civil Court or the High Court for execution through the Sheriff. In that he particularly relies on the provisions of Rule 294(b) (i) which indicates that for the purposes of the execution of the Award, the Claims Tribunal has the powers of the City Civil Court and the High Court depending on the quantum of the Award, and the award is treated as a decree for the payment of money made in a suit either by the Civil Court or by the High Court as the case may be.

7. Mr. Bobde, the learned Advocate General appearing for the respondents did not dispute that Section 110E is not the only provision under which the award of the Claims Tribunal may be executed. He submitted that the Claims Tribunal can execute the award passed by it under Order XXI of the Code having regard to Rule 294 read with Rule 310 of the Rules. The learned Advocate General submitted that the two rules read together confer powers on the Tribunal itself to resort to the provisions of Order XXI for executing its award instead of sending the award for execution to the Collector u/s 110E. However, he contended that the powers conferred cannot be construed to mean that the Tribunal has the further power to transfer the decree to the City Civil Court or the High Court for the purpose of execution through the Sheriff.

8. It is clear from the provisions of Rule 310 that the provisions of Order XXI are made applicable to the proceedings before the Claims Tribunal. Similarly under Rule 294, the award passed by the Claims Tribunal is put on par with a decree for payment of money made in a suit by the City Civil Court or the High Court. In other words, the award of the Claims Tribunal is treated as a decree passed by a Civil Court. Undoubtedly, Rule 294(1)(b) read with Rule 310 confers on the Claims Tribunal all the powers of a City Civil Court and High Court as the case may be for the purpose of the execution of the award as if the award was passed

by the City Civil Court or the High Court. However, the powers end there. The powers are obviously to execute the award which takes the shape of a decree by its own machinery in accordance with the provisions contained in O. XXI of the Code of Civil Procedure. There is nothing to indicate in Rule 294 that the Claims Tribunal is further empowered to transmit the Award to the City Civil Court or the High Court for execution through the Sheriff. It is true that the Rule viz., R. No. 294(1) has not been happily worded and a reference is separately made to the City Civil Court and the High Court depending on the quantum of the award. However, that does not carry the case any further. All that it can mean is that the Claims Tribunal is empowered to execute the award as a decree passed by the Civil Court. If the Government intended that execution of the award should be made through the City Civil Court and the High Court, it could have made a specific rule in that behalf. It is obvious that in the absence of a provision in the Act or the Rules made by the Government, the Claims Tribunal is not entitled to get warrants executed through the Sheriff by sending the same to him through the Civil Court or the High Court.

9. Though the learned Advocate General did not dispute the position that Section 110E was not the exclusive provision for execution of the awards passed by the Claims Tribunal, and in our opinion rightly so, we would like to add that confusion is created by the opening part of Rule 294(1)(b) viz., "and subject to the provisions of Section 110E". If Sub-rule (1)(b) was not worded in the manner it has been worded, it was possible to contend that Section 110E is the only mode which can be resorted to for the purpose of execution. If Sub-rule (1)(b) is read as a whole along with Rule 310, there can be no manner of doubt that in the context the expression subject to "means" in addition to".

10. This takes us to the question whether the Claims Tribunal can directly call upon the Sheriff to execute its award. In this connection, a reference may be made to Chapter XVIII of the High Court Original Side Rules and Chapter XXII of the Bombay City Civil and Sessions Court Rules, 1948. Chapter XVIII of the High Court Original Side Rules has the title "Office of The Sheriff of Bombay" and Chapter XXII of the City Court Rules has the title "Sheriffs Office". These rules relate to the execution of processes and various other duties cast on the Sheriff. It is sufficient to make a reference to Rules 445 and 451 of the High Court Original Side Rules and Rule 245(1) of the Bombay City Civil and Sessions Court Rules which specifically provide for execution of decrees or processes by the City Civil Court and the High Court through the Sheriff. But there is no provision of law or any Rule under which the Claims Tribunal can send the award to the Sheriff for execution. The provisions as they stand do not confer the power on the Claims Tribunal to direct execution of the awards passed by it through the Sheriff. As pointed out above the Claims Tribunal has the power to execute the awards through its own machinery by virtue of the provisions of Rule 294 read with Rule 310 of the Motor Vehicles Rules.

11. Perhaps it may be that the provision for execution by the Sheriff through the

City Civil Court or the High Court or directly has not been provided for because 90% of the awards do not require elaborate execution as the payments are made by the Insurance Company. It is only in the few cases where vehicles have not been insured and the amounts are in excess of the liability of Insurance Company that the other machinery provided u/s 110E or the Rules mentioned above is required to be resorted and the execution can be effected either u/s 110E through the Collector or by the Claims Tribunal through its own machinery.

12. Mr. Kudroli pointed out that in the year 1984, out of 86 awards passed by the Claims Tribunal at Bombay which were sent to the Collector for execution, only 9 recoveries have so far been made. Similarly, in the year 1985, 140 awards were sent for execution to the Collector and only in 48 cases, recoveries have been effected. In the year 1986, 160 awards were sent to the Collector whereas recoveries only in 70 awards have been made and in the current year i.e. in the year 1987 so far, 125 awards were sent to the Collector for execution and recoveries are made only in 20 cases. This, in our opinion, is a sorry state of affairs. In several cases, the claimants are either poor persons or were depending on the income of the deceased and are in need of money as early as possible. There is no reason why the Collector who has the machinery and the powers under the Land Revenue Code to execute the awards should not be able to do so within the shortest possible time. There is also substance in the contention of Mr. Kudroli that the Tribunal should have its own machinery for executing the award passed by it as also the awards which are transferred to it from the mofussil for execution. We hope that the Government would take necessary steps to provide for the necessary machinery to the Claims Tribunal for execution of the awards and also issue necessary directions to the Collector to execute the awards expeditiously. Our attention is invited to a circular dated March 31, 1986 issued by the Revenue and Forest Department of the Government to the concerned authorities directing them give priority to the execution of the awards passed by the Claims Tribunal as also the maintenance orders passed under the Code of Criminal Procedure. Mr. Kudroli, however, stated before us that adequate steps are not actually being taken to recover the amounts and distribute the same to the claimants expeditiously.

13. It was also suggested by Mr. Kudroli, that when the accident cases are reported at the police station, the police should be directed to insist on certificate of the Insurance Company of the concerned vehicles produced, so that it would be easy for the party to prosecute a claim as against the Insurance Company. Wherever a party is unable to produce such a certificate, the police should be directed to take a strict action in that behalf. Very often, the certificates are not produced and the claimants have to proceed against the owners of the motor vehicles and the drivers with no proper address and perhaps with no proper means to pay, and consequently with very little chance of recovering the amount awarded.

14. With these observations we dispose of the petition with no order as to costs.

However, we make it clear that the execution permitted at the interim stage stands and the amount realised, if any, be appropriated towards the award. A copy of this judgment be forwarded to the Government.