
(2003) 12 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 418 of 1997

The New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Jhamku and Others

RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Citation : (2004) 2 ACC 876 : (2004) 2 RLW 1181 : (2004) 2 WLC 760

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : R.K. Mehta, for the Appellant; Lalit Kawadia, for the Respondent

Final Decision : Allowed

Judgement

Prakash Tatia, J.—At the request of learned counsel for both the parties service of respondents No. 5 and 6 are dispensed with as they did not appear before the tribunal and the impugned award was passed by the tribunal against the appellant Insurance Company only.

2. Learned counsel for the parties submit that the appeals can be decided as the short pointed involved in these appeals and there is no dispute between the parties if the matter is remanded back to the learned Motor Accident Claims Tribunal, Udaipur for deciding the claim petitions in accordance with law. Therefore, at the request of both the counsel, appeals are heard on merit. Since in all these three appeals, the question of law involved is one and the same and the Motor Accident Claims Tribunal, Udaipur has decided the claim petitions by a common order dated 9.12.96, therefore, the fact of one of the claim petition will serve the purpose to understand the controversy. Therefore, the facts of one of the claim petition is mentioned hereinafter.

3. It will be relevant to mention here that the claim petitions were placed before the Lok Adalat where the appellant Insurance Company submitted that they are prepared to settle the matter subject to approval by their higher authorities. On this submission, the Motor Accident Claims Tribunal, Udaipur without waiting for

the approval of the higher authorities, passed the award on 30th May, 1992 by according that the award will come into force only if the Regional Officer of the appellant Insurance Company gives their consent.

4. The Insurance Company submitted an application before the Motor Accident Claims Tribunal, Udaipur stating therein that the Regional Officer has refused his consent for the settlement and, therefore, the matter may be taken up for deciding it on merit. The tribunal itself passed the order on 23rd Nov., 1992 and set aside the earlier conditional award dated 30th May, 1992. The tribunal, thereafter, proceeded to decide the claim petitions and recorded the evidence of the parties, but during the pendency of the claim petition, the matter was again placed before the Lok Adalat and as per the offer of the appellant Insurance Company in compromise, the same condition was there that the settlement can be arrived at only in case the head office gives confirmation for the claim amount. However, the said condition was not incorporated in the award passed by the Lok Adalat on 11th August, 1994. On 9th Nov., 1994 an application was submitted by the appellant Insurance Company stating therein that the Regional Office of the appellant Company refused to give sanction for the settlement. This application was also allowed by the Motor Accident Claims Tribunal by order dated 22nd May, 1995 and the tribunal proceeded to decide the claim petition on merit.

5. After setting aside the two contingent settlement awards, the tribunal heard the final arguments on claim petitions of the claimants, but while deciding the claim petitions, the tribunal observed that the orders dated 23rd Nov., 1992 and 22nd May, 1995 setting aside the earlier settlement award are null and, therefore, the awards, which were passed on earlier occasions are valid and the claim petitions are not required to be decided on merits. Against this order refusing to pass award of the tribunal dated 19th Dec., 1996, the appellant preferred these appeals.

6. Learned counsel for the appellant submits that the tribunal's order dated 9th Dec., 1996 is absolutely illegal and nullity and not the orders passed by the tribunal on 23rd Nov., 1992 and 22nd May, 1995.

7. Learned counsel for the claimants submits that the claimants have no objection if the matter is remanded back to the tribunal again for deciding the claim petitions on merits in accordance with law as all the proceedings have already been taken place before the tribunal.

8. I perused the reasons given by the learned Judge, Motor Accident Claims Tribunal, Udaipur. It is clear from the award dated 30th May, 1992, which clearly says that the award will come into effect only if the consent is given by the Regional Office of the appellant Insurance Company. Therefore, the award dated 30th May, 1992 was not at all an operative and effective award. The order dated 22nd May, 1995 passed by the Motor Accident Claims says that the awards passed in all the three claim petitions are set aside whereas, in fact, the tribunal

should have passed the order that the award passed in the Lok Adalat never became effective and, thereafter, the tribunal should have proceeded to decide the claim petitions. The saying of the Motor Accident Claims Tribunal that earlier awards are set aside, are of no consequence. A award, which has not come into force, need not be set aside as such award cannot be treated as a award deciding the case or the claim, as the case may be. This aspect has not been examined by the learned Motor Accident Claims Tribunal while passing the impugned order passed 9th Dec., 1996 refusing to pass the award on the claim petitions,

9. So far as subsequent settlement between the parties in Lok Adalat on 11th August, 1994 is also of the same nature and the learned Tribunal itself in its impugned order clearly mentioned that in the settlement itself, it has been mentioned that the settlement will be done if the consent is given by the Regional Office about the claim amount. Therefore, it is clear that the competent authority for giving sanction and to settle the matter was the higher office, then the officer, who submitted the offer to settle the matter and this fact was not taken note of by the tribunal in correct perspective and the tribunal should have examined the order dated 22nd May, 1995, which was passed by the tribunal after hearing both the parties. The successor Judge of the Motor Accident Claims Tribunal should not have lightly observed that the order dated 22nd Nov., 1992 and order dated 22nd May, 1995 nullity, that too, when both the parties as well as the tribunal itself correctly understood that the awards were not final and were only contingent.

10. Before examining the validity of the order dated 22nd Nov., 1992 and order dated 22nd May, 1995, the tribunal should have examined whether the settlement was by the competent person or not and whether the said awards attained the shape of final awards. When both the parties admit that the settlement was subject to confirmation by the higher authorities of the insurance company and this fact is mentioned in the settlement itself then the order should have been read in the contest in which it was passed by the tribunal.

11. The tribunal while refusing to decide the claim petitions after the complete trial of the claim is absolutely illegal and cannot be allowed to stand.

12. In view of the above, these appeals deserve to be allowed. The learned tribunal is directed to decide the claim petitions within a period of three months from the date of receipt of the certified copy of this order on merits. Both the parties are directed to appear before the learned Tribunal on 27.1.2004.