

(1980) 09 DEL CK 0011

In the Delhi High Court

Case No : First Appeal No. 148 of 1980

The Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Kiran Wati and Others

RESPONDENT

Date of Decision : 16-09-1980

Acts Referred:

Citation : (1981) 19 DLT 247

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : V.P. Chaudhary and C.M. Chopra, for the Appellant;

Judgement

Sultan Singh, J.

(1) This is appellants application u/s 151 of the CPC (hereinafter called "the Code") for stay of the award dated 15th February, 1980 made by the Motor Accident Claims Tribunal, Delhi on an application for compensation under Section 110-A of the Motor Vehicles Act, 1939 (hereinafter called "the Act") The Tribunal awarded a sum of Rs. 80,000.00 to respondents No. 1 to 5 against the appellant and respondents 6 and 7 as compensation for death of one Raj Singh who died due to injury received in a road accident. The appellant filed the appeal which was admitted on 16th April 1980. The appellant also made this application (G.M. No. 1025 of 1980) for stay of operation of the impugned award in excess of Rs. 50,000.00 as the appellant's contention is that in any case it is liable to pay a maximum sum of Rs. 50,000.00 to the claimants u/s 95 of the Act. It appears that the appellant as per order dated 16th April, 1980 deposited Rs. 50,000.00 with the Tribunal. The question for decision now is whether the recovery of the remaining amount under the award against the appellant Insurance Company should be stayed It is contended on behalf of respondents 1 to 5 that there is no merit in the appeal, that the appellant Insurance Company should be directed to pay the entire amount awarded by the Tribunal, that in any case it is a money claim which has been awarded by the Tribunal to respondents Nos. 1 to 5 and as such the execution of the amount under the award be not

stayed unless the appellant complies with Rule 1 (3) and Rule 5(5) of Order 41 of the Code. These rules are as under :

"RULE1 (3) : Whether the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the court may think fit. Rule 5(5) : Notwithstanding anything contained in the forgoing sub rules, where the appellant fails to make the deposit or furnish the security specified in Sub-rule (3) of rule 1 the court shall not make an order staying the execution of the decree."

(2) It is contended on behalf of the claimants respondent 1 to 5 that the award of the Tribunal is "like a decree referred to in Order 41 of, the Code. On the other hand, the learned counsel for the appellant contends that the said rules are not applicable to awards made by the Tribunal under the Act. His contention is that the award is neither a decree nor an order of a court. He further submits that the Tribunal under the Act is not a court and Therefore the said rules of Order 41 are not applicable. An application for compensation arising out of an accident of the nature specified in Section 110 of the Act is made u/s 110-A of the Act. The claims Tribunal makes an award u/s 110-B of the Act. Section 110-C of the Act makes provision regarding powers and procedure of the Tribunal. Section 110-D of the Act provides for appeals. Under this Section any person aggrieved by an award of the claims Tribunal is allowed to prefer an appeal to the High Court. The present appeal was filed by the appellant under this Section. There are number of Judgments holding that an award made by the claims Tribunal is neither a decree nor an order of the Court and that the Claims Tribunal under the Act is not a court. The .learned counsel for the claimants respondents 1 to 5 in view of the various judgment also does not contest the same. His contention is that the appeal filed in the High Court would be governed by the practice and procedure of this court unless there is any special provisions made either in the act or in the rules framed under the Act. The Act or Rules do not prescribe any special procedure for the decision of an application for stay of execution of the award made by the Tribunal. Section 117 of the Code provides that the provisions of the Code shall apply to the High Court. Further Section 141 of the Code provides that the procedure provided in the Code in regard to the suits .shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. Thus it is contended on behalf of the respondents claimants that the proceedings of the appeal though filed under the Act are to be governed by the Code. Order 41 of the Code applied to appends from the original decrees and Order 43 Rule 2 of the Code prescribes that the rules or Order 41 shall apply to appeals from orders. Thus, Rules 1(3) and 5(5) of Order 41 of the Code shall apply to decree or order for, payment of money. In Collector of Varanasi Vs. Gauri Shankar Misra and Others, it is laid down, the rule is well settled that when a statue directs that an appeal shall lie to a court already established then that appeal must Be regulated by the practice and procedure of that court." The matter before the Supreme Court pertained to the proceedings u/s 19(1) (f) of

the defense of India Act, 1939. It was held that the High Court functions as "Court" and not as designated person and that the practice and procedure of the High Court regulates, the appeal under the defense of India Act. Section 19(1)(f) of the defense of India Act, provided an appeal to the High Court. Thus I am of the view that the appeal filed by the appellant u/s 110-D of the Act is to be governed by the practice and procedure of this court. The practice and procedure of this court according to Sections 11 and 141 of the Code is as provided in the Code itself. These provisions are to be made applicable as far as possible. Thus the word "Award" may be read for the word "Decree" in these rules, and an appropriate order can be passed for the stay of execution of the impugned award of the Tribunal in terms of Rules 1(3) and 5(5) of Order 41 of the Code. In Smt. Ishwar Devi Malik and others v. Union, of India A.I.R, 1969 Del 183 this court in exercise of powers under Order 41 Rule 33 of the Code awarded compensation in favor of the respondents claimants in order to do complete justice between the parties. In other words, Rules 33 of Order 41 of the Code was applied by this court to the award of the Claims Tribunal. Similarly the provisions of the Rule 22 of Order 41 of the Code were applied by this Court in Delhi Transport Undertaking and Another Vs. Raj Kumari and Others, . It was held when an appeal is filed in the High Court all the procedure of said court becomes applicable. It has also been observed in the said judgment of this court", even where an appellate jurisdiction is conferred under a special statute, the rules and practice and procedure of the Code become applicable to the appeal unless there is any specific rule to the contrary in the special statute." In the said case after the filing of the appeal u/s 110-D of the Act the respondent filed cross-objections and the question raised was whether cross-objections could be filed. The answer was in the affirmative. There are various judgments of various court where the provisions of Rule 22 of Order 41 of the Code was applied to appeals under the Act.

(3) The learned counsel for the appellant referred to Section 111-A of the Act under which the State Government is empowered to frame rules for the purpose of carrying into effect the provisions of Sections 110 to 110-E. Clause (b) of Section 111-A provides for making of the rules regarding the procedure to be followed by a claims Tribunal in holding an inquiry. The Delhi Motor Vehicle, Rules, 1940 were framed by the Chief Commissioner, Delhi an exercise of the powers conferred by Section 111-A of the Act. These rules have been amended from time to time. Rule 22 of the Delhi Motor Vehicles Rules, 1940 provides that the provisions of the First Schedule to the CPC as detailed therein would apply to the proceedings before the claims Tribunal. Obviously Order 41 is not one of the orders of the Code made applicable to proceedings before the Claims Tribunal. It is, Therefore, contended on behalf of the appellant that the orders of the Code which were applicable to the proceedings under the Act were mentioned in the rules and as Order 41 does not find place in the said Rule 8.22, this court cannot apply rules under Order 41 of the Code to the appeals. The argument does not appear to be correct. Rule 8.22 which reads as under provides for the application

of the provisions of the Code only to the proceedings before the High Court.

"RULE22.Code of Civil Procedure to apply in certain cases. The following provisions of the First Schedule to Code of Civil Procedure, 1908 shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30, Order IX, Order XIII Rules, 3 to 10, Order XVI, Rules 2 to 21; Order XVII; and Order XXIII, Rules 1 to 3".

(4) No other provision has been brought to my notice either in the Act or in the rules to exclude the application of Rules 1 (3) and 5(5) of Order 41 of the Code to the proceedings before this Court arising out of appeals against the awards made by the Claims Tribunal. When an appeal is filed against the award of the Claims Tribunal awarding compensation arising out of the accident the provisions of Rules 1(3) and 5(5) of Order 41 are thus applicable to appeals and application for stay of execution of the award.

(5) Further contention of the learned counsel for the appellant is that the Tribunal awarded compensation to the extent of Rs. 80,000.00 while u/s 95 of the Act, the Insurance Company is not liable for more than Rs. 50,000.00. This is a controversial point which is to be decided at the time of hearing of the appeal. Under Rule 1(3) of Order 41 of the Code, there are two options, either to direct the appellant to deposit the awarded amount or require it to furnish security. In view of Section 95 of the Act it does not appear to be a case for a direction to the appellant to deposit any amount over and above Rs. 50,000.00. The appellant has already deposited Rs. 50,000.00 and for the balance of Rs. 30,000.00 it would be sufficient if the appellant Insurance Company furnishes a Security bond in favor of the Claims Tribunal for payment of the remaining amount of the claimants-respondents 1 to 5 in accordance with the decision of the appeal by this court. The appellant Insurance Company is accordingly directed to furnish a security bond for the remaining amount under the award including costs and interest to the satisfaction of the Claims Tribunal within one month from today. The security bond is not to be accepted by the Claims Tribunal without notice to the claimants-respondents 1 to 5. aa Parties are left to bear their own costs. Appeal allowed.