

(2007) 02 MAD CK 0095

In the Madras High Court

Case No : C.R.P. (NPD) No. 1262 of 2006

United India Insurance Co. Ltd.

APPELLANT

Vs

Jabeen and Others

RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 23 Rule 3, Order 3 Rule 1, 47

Citation : (2007) 3 MLJ 58

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : N. Chandra Raj, for the Appellant; K. Hariharan, for the Respondent

Judgement

R. Banumathi, J.—As against the award passed by the Motor Accidents Claims Tribunal, "Whether claimants can enter into terms with the Insurance Company in full and final settlement and if so, can the claimants resile from such compounding terms", are the points falling for consideration in this revision.

2. Backgrounds facts in nutshell are as follows:

2.1. Claiming compensation for death of one Syed Nasser, Respondents/claimants filed O.S. No. 1478/1996, claiming compensation of Rs. 6,00,000/-. Tribunal has awarded compensation of Rs. 5,03,470/- on 22.01.1999. According to the Insurance Company, the then counsel Mr. Udayakumar gave a proposal dated 08.04.1999, accepting the amount 30% lesser than the awarded amount in full and final settlement of the award passed. Respondents 1 to 5 have executed an undertaking that they would accept a sum of Rs. 5,00,000/- in full and final settlement of the award amount including interest and cost. Claimants filed memo for Full satisfaction of the award amount and withdrew the said amount.

2.2. Denying execution of any compromise memo, Respondents/claimants filed E.P. No. 970/2001 claiming balance amount of Rs. 3,00,497.25. Revision

Petitioner/Insurance Company has filed counter statement referring to the compromise memo and withdrawal of amount by the Respondents and recording of FULL SATISFACTION MEMO.

2.3. Denying any compounding of the award and further denying knowledge of the contents of the said Memo, Respondents filed application u/s 47 CPC - E.A. No. 1165/2004.

2.4. Detailed enquiry was conducted. Both parties adduced oral and documentary evidence. Doubting the Memo of Compromise, Court below observed that claimants would not have agreed to give up interest. Finding that there could not have been Full Satisfaction and that Insurance Company is bound to pay balance with interest, Execution Court allowed application filed u/s 47 CPC and directed the Insurance Company to pay the balance amount of Rs. 3,00,497, which is challenged in this Revision Petition.

3. Assailing the impugned Order, the learned Counsel for the Insurance Company contended that claimants having entered into terms with the Insurance Company and having withdrawn the amount, cannot maintain another execution Petition, claiming difference of amount. Taking me through the records, the learned Counsel further contended that the Court having recorded full satisfaction, on the basis of Compromise memo, the claimants cannot resile from the compromise memo.

4. The learned Counsel for the Respondents argued at length contending that the said Compromise is the handiwork of counsel who was then on record for claimants and the said compromise never came into existence and is unacceptable. Placing reliance upon TLNJ 2006(3) 481 Civil [Padma Ben Banushali and Anr. v. Yogendra Rathore and Ors.], it was contended that payment made to Decree-Holder outside Court cannot be recognized in the absence of the same being recorded under Order 21 Rule 2 CPC and the mandatory obligation of getting the payment certified by Execution Court has not been established by the Insurance Company.

5. I have carefully examined the records and given thoughtful consideration to the contentions of both parties.

6. In O.P. No. 1478/1996, award for a sum of Rs. 5,03,120/- was passed on 22.01.1999. Company opined that award was on the higher side and they made arrangements to file appeal on the quantum of compensation and other aspects. For preferring appeal, an amount of Rs. 25,000/- was also paid under Ex.R-3-Receipt. At this stage, the then counsel for the claimants Mr. S.Udayakumar gave a proposal dated 08.04.1999 [Ex.R-4] for accepting an amount 30% lesser than the award amount, in full and final settlement of the award. In the said letter, counsel Mr. S.Udayakumar has stated "to avoid further delay in settling the amount and to avoid prolongment, the claimants are willing to modify the award". Under the proposal, award was sought to be modified as follows:

In O.P. No. 1478/96 the award of Rs. 5,03,420.00 may be modified to Rs. 4,60,000.00 with proportionate interest and costs and in O.P. No. 1023/96 the award of Rs. 51,000.00 may be modified to Rs. 40,000.00 with proportionate interest and costs.

Be it noted, proposal for compromise was not only in respect of O.P. No. 1478/96 but also for connected O.P. No. 1023/96.

7. Pursuant to the proposal, Respondents/claimants are said to have executed compromise memo/terms of undertaking, agreeing to receive Rs. 5,00,000/- in modification of the award passed in O.P. No. 1478/1996. Ex.R-1 reads as follows:

8. As against the award of Rs. 5,03,120/- parties agreed to receive Rs. 5,00,000/- to be apportioned amongst the claimants i.e. the first Petitioner to receive Rs. 2,00,000/- [as against the award amount of Rs. 2,76,000/-]; parents of deceased viz., claimants 4 and 5 to receive Rs. 50,000/- each [as against the award amount of Rs. 69,000/- each]; for minor children 2 and 3 Rs. 1,00,000/- each invested in bank. The amount of Rs. 5,00,000/- was deposited in October 1999. On 27.10.1999, claimants 1, 4 and 5 have filed Cheque Applications in M.P. Nos. 2088, 2089, 2090/1999 and withdrawn the amount of Rs. 2,00,000/-, Rs. 50,000/-, Rs. 50,000/- respectively. In the supporting affidavit, claimants have stated that they are foregoing interest. On behalf of the claimants 1, 4 and 5, FULL SATISFACTION MEMO was filed and Court recorded as "FULL SATISFACTION" on 05.11.1999.

9. Now the claimants deny having entered into compromise. According to the claimants they are not conversant with the language of Tamil either to read or write and they could sign only in English and Urdu. Assailing the compromise memo, on behalf of the Petitioners, the following contentions were raised:

Claimants signatures were obtained in blank papers and claimants 1 and 5 are Pardanishan women and 4th claimant - father of deceased, is not conversant in Tamil Language;

Modification of the award for Rs. 5,00,000/- is ingeniously designed against the interest of the minors and there is no necessity for claimants to forego interest or compound the award for lesser amount;

Claimants never intended to agree for modification of any Decree and they have not at all authorized their counsel to give any proposal for accepting lesser amount and the said memo of compromise was purely engineered by the then counsel on record.

10. During their cross examination, claimants 1, 4 and 5 have admitted their signatures in Ex.R-1. Admittedly in Ex.R-1 - compromise memo, the then counsel on record Mr. Udayakumar has signed as "identified by me", which clearly shows that compromise was out come of proposal mooted through the claimants' advocate. Apart from the counsel, two other witnesses have also attested signatures of claimants in Ex.R-1. Contentions raised assailing the genuineness

of Ex.R-1 are untenable.

11. That compromise was acted upon is evident from subsequent events. As noted earlier, pursuant to compounding of award, amount of Rs. 5,00,000/- was deposited to the credit of O.P. No. 1478/1996 in October, 1999. On 27.10.1999, claimants filed cheque Petitions and withdrew the amount and Full Satisfaction was recorded. Drawing the attention of the Court to FULL SATISFACTION MEMO filed, learned Counsel for the claimants has submitted that the word "PART" has been struck and then corrected as "FULL SATISFACTION" for the received amount and "FULL SATISFACTION MEMO" was not even sealed or dated. This contention is bereft of merits since pursuant to FULL SATISFACTION MEMO, Court has recorded full satisfaction, on 05.11.1999.

12. The contention that claimants have not authorized their Advocate to moot a proposal for modification of the award to avoid delay does not merit acceptance. It is well settled that relationship of counsel and his party is recognized as Agent and his Principal, as a matter of contract. Time and again, Supreme Court has held that in terms of Order 3 Rule 1 CPC, under Order 23 Rule 3 CPC, the counsel can act on behalf of the parties to enter into a compromise. Useful reference shall be made to - Byram Pestonji Gariwala Vs. Union Bank of India and others, ; 2003 ii SCC 372 [Jineshwardas by Lrs. and Ors. v. Jagrani and Anr.].

13. It is seen from records that the then counsel Mr. S. Udayakumar had given proposal for modification of award with a view to avoid delay in settling the amount and to avoid prolongment. The proposal seems to have been mooted out by the counsel only for avoiding delay in settling the amount as Insurance Company has proposed to prefer appeal against the award.

14. Grievance of claimants against their counsel has no basis. Why should Insurance Company create a document like Ex.R-5 at the instance of counsel in a award for the sake of few lakhs of rupees. It is quite unacceptable that signatures of claimants have been obtained in blank sheets and were used for creating compromise memo. If that be so, why should the claimants file "FULL SATISFACTION MEMO" in the Court. During his cross-examination, 4th claimant was able to read English by reading "FULL SATISFACTION". If really there was no such compounding of the award, claimants would not have filed "FULL SATISFACTION MEMO" which the Court has also recorded on 05.11.1999.

15. Placing reliance upon Manuraj Chandrakant Babar Vs. Bapusaheb Babasaheb Deshmukh, ; Sultana Begum Vs. Prem Chand Jain, ; Lakshmi Narayanan Vs. S.S. Pandian, , learned Counsel for the Respondents contended that payment made to Decree-Holder outside Court cannot be recognized in the absence of the same being recorded under Order 21 Rule 2 CPC. It was further contended that any certified payment of money or adjustment, which is not recorded by the Court under Order 21 Rule 2 CPC, cannot be recognized by the Execution Court and the Execution Court has rightly gone into the adjustment or satisfaction of Decree and allowed Section 47 Petition, directing payment of balance amount.

16. Of course, uncertified payment of money or adjustment, which is not recorded by the Court under Order 21 Rule 2 CPC cannot be recognized by the Execution Court. As held by the Supreme Court, special provisions contained in Order 21 Rule 2 CPC are enacted to prevent the Judgment-Debtor from setting up false or cooked up pleas so as to prolong or delay the execution proceedings. In the present case, Judgment-Debtor is Insurance Company. It is quite improbable that for the sake of few lakhs of rupees, the Company would have fabricated a document like Ex.R-1. Cheque Petitions were filed and amounts were withdrawn and "FULL SATISFACTION" was also recorded. Filing of cheque Petitions and withdrawal of money amounts to certification of payment by the Court which passed the award. Execution Court ought to have recognized that payment and "FULL SATISFACTION" recorded earlier in O.P. No. 1478/1996.

17. Drawing attention of the Court to striking off "PART" and writing "FULL SATISFACTION" in the memo filed and certain other hand written portion in the affidavit, the learned Counsel for the Respondents urged the Court to draw inference of connivance of the erstwhile counsel with the Company. Points urged are trivial and would not affect compounding of the award and full satisfaction recorded in the Court of law.

18. Withdrawal of amount and recording of full satisfaction goes a long way, fortifying Ex.R-1 - compromise memo. Record of proceedings made by Court is sacrosanct and parties cannot dispute the correctness of the proceedings of record. As held by the Supreme Court, Judge's record was conclusive. Neither lawyer nor litigant may claim to contradict it except before the Judge himself, but nowhere else.

19. In State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , the Supreme Court has held as under:

[T]he Judges' record was conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else. The Court could not launch into inquiry as to what transpired in the High Court.

The Court is bound to accept the statement of the Judges recorded in their Judgment, as to what transpired in Court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their Judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of facts as to what transpired at the hearing, recorded in the Judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a Judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no

such step is taken, the matter must necessarily end there.

20. Again in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, the Supreme Court has held as under ::

It is now settled law that the statement of facts recorded by a Court or quasi-judicial tribunal in its proceedings as regards the matter which transpired during the hearing before it would not be permitted to be assailed as incorrect unless steps are taken before the same forum. It may be open to a party to bring such statement to the notice of the Court/tribunal and to have it deleted or amended. It is not, therefore, open to the parties or the counsel to say that the proceedings recorded by the tribunal are incorrect.

21. By filing Petition u/s 47 CPC, it is not open to the claimants to doubt the Court proceedings and recording of "FULL SATISFACTION". Entering into compromise, filing cheque applications and withdrawal of amount clearly falsify the claimants' version. This Court is constrained to express its disapproval on the conduct of the claimants. Having received the amount, claimants seek to reopen the entire matter. Execution Court has not considered these aspects in proper perspective and there is no proper analysis of sequence of events. The impugned Order directing Company to pay the balance of Rs. 3,00,497/- is unsustainable.

22. For the foregoing reasons, the impugned Order of the III Motor Accident Claims Tribunal, Chennai, [III Judge, Small Causes Court], made in E.A. No. 1165/2004 is set aside and this Revision Petition is allowed. No costs. Consequently, M.P. No. 1/2006 is closed.