
(2009) 01 AHC CK 0179
In the Allahabad High Court

U.P. State Road Transport Corporation and Another	APPELLANT
Vs	
Deepkali	RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2010) ACJ 2008

Hon'ble Judges : Shishir Kumar, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh and Shishir Kumar, JJ.—Heard Mr. Prabhakar Tiwari, learned Counsel for the appellants and Mr. Rajesh Pandey, learned Counsel for respondent.

2. Instant appeal u/s 173 of the Motor Vehicles Act, 1988, has been preferred against the impugned award dated 18.8.2003 passed by the Motor Accidents Claims Tribunal/II Addl. District Judge, Faizabad in Deepkali v. U.P.S.R.T.C Claim Petition No. 228 of 2001.

3. The brief facts giving rise to the present appeal are that on 13.2.1993 at about 11.30 p.m. an accident took place near Sidhauri, Police Station Ataria, District Sitapur. The respondent's husband late Jagdish Singh was travelling in a Roadways bus No. UP 53-B 4998. On account of rash and negligent driving of the bus, the accident took place with a truck resulting in serious injuries caused to the deceased. On account of serious injuries, the deceased succumbed at later stage. In the said accident, the co-driver and five other persons died. After death of the deceased, the claimant approached the Motor Accidents Claims Tribunal with a petition preferring claim for Rs. 11,63,000 before the Tribunal. Learned Tribunal awarded compensation to the tune of Rs. 1,49,500 separately apart from other expenses. Feeling aggrieved with the impugned award the appellants approached this Court preferring the instant appeal.

4. According to the learned Counsel for the appellants, the claimant had earlier filed a claim petition in the Motor Accidents Claims Tribunal, Lucknow, which was registered as Case No. 54 of 1993. The claim petition filed at Lucknow was dismissed in default and the court concerned did not restore the same. Thereafter, the claimant filed another petition at Faizabad in the court concerned. While filing the petition at Faizabad, the claimant took the defence that since the claim petition filed at Lucknow was dismissed in default without adjudicating the controversy on merit, it was very well maintainable. While assailing the impugned award Mr. Prabhakar Tiwari, learned Counsel appearing for the appellants has tried to assail the impugned award with the averment that the claimant had concealed the material fact with regard to the petition filed at Lucknow. Filing of another petition is barred by the principle of constructive res judicata. It has also been submitted by learned Counsel for the appellants that the compensation awarded by the Tribunal is excessive and is not sustainable.

5. On the other hand, learned Counsel for the respondent submits that since the petition filed at Lucknow was dismissed in default, the Tribunal at Faizabad had very well acted in jurisdiction while adjudicating the controversy on merit. Learned Counsel for the respondent has relied upon the judgment of Hon''ble Supreme Court in Ram Gobinda Dawan and Others Vs. Smt. Bhaktabala,

6. We have considered the argument advanced by the learned Counsel for the parties at length and perused the record.

7. A perusal of the impugned award reveals that it is not a case where the claimant has concealed the material fact with regard to dismissal of the petition filed at Lucknow, rather the claimant has disclosed the fact with regard to dismissal of the petition at Lucknow in default and stated before the Tribunal that since the petition filed at Lucknow was dismissed in default without adjudicating the controversy on merit. In the case of Ram Gobinda Dawan and Others Vs. Smt. Bhaktabala, the Hon''ble Supreme Court held that in case a suit is dismissed in default or for want of prosecution, it shall not operate as res judicata in subsequent suit. The relevant portion from the judgment of Ram Gobinda Daw (supra) is reproduced as under:

(24) In Sheodan Singh Vs. Smt. Daryao Kunwar, the question whether a decision given by the High Court dismissing certain appeal on the ground of limitation or on the ground that the party had not taken steps to prosecute the appeal operates as res judicata, was considered by this Court. In that case, A had instituted against B two suits asserting, title to a certain property. B contested those claims and also instituted two other suits to establish his title to the same property as against A. A's suits were decreed and B's suits were dismissed. B filed four appeals, two appeals against the decision given in A's suits and two appeals against the dismissal of his two suits. It is seen that all the appeals were taken on the file of the High Court but the two appeals filed by B against the decision in the suits instituted by him were dismissed by the High Court on the grounds that one was filed beyond the period of limitation and the other for non-

prosecution. At the final hearing High Court took the view that dismissal of B's two appeals, referred to above, operated as res judicata in the two appeals filed by B against the decision in A's suits on the question of title to the property. It was urged before this Court on behalf of B that dismissal of his appeals on the grounds of limitation and non-prosecution by the High Court does not operate as res judicata as the High Court cannot be considered to have heard and finally decided the question of title. This contention was not accepted. This Court has referred to instances where a former suit has been dismissed by a trial court for want of jurisdiction or for default of plaintiff's appearance, etc., and pointed out that in respect of such class of cases, the decision not being on merits, would not be res judicata in a subsequent suit. It was further pointed out that none of those considerations apply to a case where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground like limitation or default in pleading. It was held that such dismissal by an appellate court has the effect of confirming the decision of the trial court on merits, and that it amounts to the appeal being heard and finally decided on the merits whatever may be the ground, for dismissal of the appeal.

(25) It will be seen from the above reasoning that in order to operate as res judicata, the previous decision must have been given after the matter was heard and finally decided on merits. This Court has further held that the High Court, in that case, when it dismissed the two appeals in question, though on a preliminary ground of limitation or default in pleading must be considered to have heard and finally decided on merits. Far from supporting Mr. Mukherjee's contention that a decision given in default of appearance under any circumstance, operates as res judicata, the above decision lays down clearly that a previous decision to operate as res judicata must be one in a case heard and finally decided on merits.

8. Applying the principle laid in *Ram Gobinda Dawan and Others Vs. Smt. Bhaktabala*, since the earlier claim application filed by the claimant was dismissed in default without adjudicating the controversy on merit, the petition filed at Faizabad seems to be maintainable. The finding recorded by the learned Tribunal does not seem to suffer from any impropriety or illegality.

9. So far as the submission of appellant's counsel that amount of compensation is excessive and unreasonable that does not seem to be sustainable. The Tribunal had assessed the annual income to the minimum, i.e., at the rate of Rs. 15,000 per year, which neither seems to be excessive nor unreasonable.

10. Accordingly, in view of above, the impugned award passed by the learned Tribunal does not suffer from any impropriety or illegality. The appeal is devoid of merit, as such, it is dismissed. No order as to costs.