IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 68 OF 2016

KADAMBA TRANSPORT CORPORATION
LTD., REP. BY MANAGING DIRECTOR
MR.DERRICK PEREIRA NETO. ... Petitioner

Versus

MRS.MARIA ANTONIETA RODRIGUES E DA
COSTA AND 2 ORS., ... Respondents

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Mr. Ajit R. Kantak with Ms. Rajas A. Kantak, Advocates for the Petitioner.

Mr. Avdhut Arsekar with Mr. Harshad Arsekar, Advocates for the Respondents.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 11th APRIL, 2016

PRONOUNCED ON:- 13th APRIL, 2016

ORDER:

By this petition, the petitioner/judgment debtor is challenging the order dated 06.06.2015 passed by the Motor Accident Claims Tribunal, Margao in Execution Application No. 29/2014, by which the learned Tribunal has held that the respondents/decree holders are entitled to an amount of Rs.61,203/- towards full and final satisfaction of the award.

2. The respondents had filed Claim Petition No. 111/2005 against the petitioner seeking compensation of Rs.10,00,000/-. By an award dated 19.05.2008, the Tribunal had awarded an amount of Rs.3,89,200/- alongwith interest at the rate of 9% per annum, from the date of the petition till the date of the award and further interest at the same rate, if the amount is not paid within a month, of the passing of the award. The amount of Rs.50,000/- granted under Section 140 of the Motor Vehicles Act, 1988 (the Act, for short) was directed to be adjusted against the final compensation awarded. The respondents challenged the same before this Court in First Appeal No. 226/2008. By judgment dated 06.09.2013, the appeal was partly allowed, thereby reducing the compensation to Rs.3,06,600/-. The part of the award relating to interest was maintained.

3. Undisputedly, the petitioner had deposited Rs.50,000/- awarded under Section 140 of the Act on 16.12.2008 and an amount of Rs.25,000/- towards statutory deposit on 20.08.2008 and further amount of Rs.4,35,402/- on 09.01.2009. The respondents have withdrawn the amount of Rs.75,000/- on 16.04.2011.

4. The respondents filed Miscellaneous Civil Application No. 29/2014 before this Court for withdrawal of the amount deposited by the petitioner herein. That application was disposed of on 25.07.2014, permitting the respondents to withdraw an amount of Rs.3,26,375/- (which was the undisputed amount) alongwith interest accrued thereon, after deducting the amount of Rs.75,000/-, which was already withdrawn on 16.04.2011. The respondents were relegated to file an execution application seeking recovery of the rest of the amount, if any. A perusal of the said order shows that, as per the calculation submitted by the Registry, the respondents were entitled to an amount of Rs.4,47,409.80 as on 05.01.2009. On the other hand, according to the petitioner herein, the respondents were entitled to Rs.3,26,375/- and claimed refund of Rs.1,09,027/-.

5. It is thereafter that the petitioner approached the executing Court. The executing Court by the impugned order has come to the conclusion that the respondents are entitled to an amount of Rs.61,203/- towards the final satisfaction of the award passed by the Tribunal, which is subject matter of challenge herein.

6. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondents. Perused record.

7. The only contention that is raised on behalf of the petitioner is that the amount of Rs.50,000/- deposited towards No Fault Liability (NFL) could not have been appropriated towards interest. The contention is that the said amount has to be appropriated towards the principal amount awarded under Section 166 of the Act. The learned Counsel for the petitioner has placed reliance on the proviso to Section 140 of the Act and the award passed in this case, in order to submit that the amount awarded under Section 140 of the Act was to be adjusted against the final compensation. In short, it is contended that the amount of Rs.50,000/- ought to have been first deducted from Rs.3,06,600/- and thereafter, interest ought to have been applied. The learned Counsel for the petitioner has placed reliance on the decision of the Kerala High Court in the case of **Oriental Insurance Co. Ltd. Vs. Nirmala & Others, AIR 2007 KERALA 103**.

8. The learned Counsel for the respondents has placed reliance on the decision of the Hon'ble Apex Court in **V.Kala**

Bharathi and Others Vs. Oriental Insurance Co. Ltd., 2014 ALL SCR 2075, in order to submit that an award of the Claims Tribunal is to be executed as a decree of the Civil Court. He submits that the amount of Rs.50,000/- was deposited much after the final award was passed. He thus points out that the amount of NFL was not deposited during the pendency of the petition. Thus, it is the final award which was required to be executed. It is submitted that the Tribunal has rightly accepted the computation made by the Registry of this Court and as such, no interference is called for.

9. I have considered the submissions made. It is a matter of record that the award passed by the Tribunal was modified by this Court and compensation of Rs.3,06,600/- was granted. The order as regards the award of interest was maintained. The amount awarded under Section 140 of the Act was deposited on 16.12.2008 i.e. after the passing of the final award. What the award passed by the Tribunal stipulates is that the amount granted under Section 140 of the Act shall be adjusted against the final compensation. All that it means, is that the award under Section 140 of the Act is not in addition to the award under Section 166 of the Act.

The proviso to Section 140 of the Act says that the amount of such compensation to be given under "any other law", shall be reduced from the amount of the compensation payable under the said section or under Section 163-A of the Act. Thus, the proviso does not make any reference to the compensation awarded under Section 166 of the Act. In any case, the amount under Section 140 of the Act was not deposited during the pendency of the petition and all that the award passed by the Tribunal would mean that the amount awarded under Section 140 of the Act could not be in addition to the final compensation awarded under Section 166 of the Act.

10. It is trite that the object of grant of compensation under Section 140 of the Act is to provide immediate relief to the claimant. Explanation to Section 165 of the Act would show that "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under Section 140 of the Act. Thus, the compensation granted under Section 140 of the Act is, part of the compensation awarded in respect of the accident involved in the death of or bodily injury to persons arising out of the use of the motorvehicles.

It is in this view of the matter that, it is stipulated in the award under Section 166 of the Act, that the amount awarded under Section 140 of the Act, shall be adjusted against the final payment. This cannot be treated as a stipulation in the award, for the amount shall be first appropriated towards principal. In fact, such an occasion would normally not arise, where the amount awarded under Section 140 of the Act is paid during the pendency of the petition under Section 166 of the Act. It is the matter of record that although, as per the order dated 16.12.2008, the amount of Rs.50,000/- under Section 140 of the Act was payable within a period of 30 days and if not, it was to carry interest at the rate of 6% per annum, but the same was paid only after the final award. Thus, for the present purpose we have only to look to the final award, as passed in this case.

11. In **V.Kala Bharathi** (supra), it has been *inter-alia* held that in the absence of a direction contained in the decree, the adjustments shall be made first towards the interest and costs and thereafter, towards the principal amount, subject to, any agreement between the parties.

12. In the case of **Nirmala** (supra), the Division Bench in paragraph 12 of the judgment has *inter-alia* held that no interest shall be payable under the award under Section 140 of the Act, after the date of its deposit. In other words, such interest granted on the amount under Section 140 of the Act will cease on the deposit of the said amount. It has been held that the amount awarded under Section 140 of the Act has to be deducted from the final award amount and then interest is to be calculated on the balance amount as per the final award.

It is evident that such a situation can only arise where amount awarded under Section 140 of the Act is deposited during the pendency of the petition under Section 166 of the Act. Here is a case where the amount was deposited after the final award under Section 166 of the Act was passed. Thus, in my considered view, the judgment in the case of **Nirmala** (supra) does not advance the cause of the petitioner.

13. In that view of the matter, no exception can be taken to the impugned order passed by the Tribunal, as there is no error of jurisdiction, much less resulting into any manifest injustice, which would require an exercise of extra ordinary jurisdiction of this Court under Article 227 of the constitution of

India.

In the result, the Writ Petition is hereby dismissed, with no order as to costs.

C.V. BHADANG, J.

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