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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 455 OF 2017

1. Smt. Mamta Banjare, Wd/o Late Sanjay Banjare, aged about 20 years, Caste Satnami, Permanent R/o Village Sinodha , Post Office Sikari, Kesali, P.S. Bhatapara, Tahsil Simga, District Baloda Bazar- Bhatapara, Chhattisgarh, Presently Resided At- C/o Shri Gyani Lahre, Ward No.11, Danweer Bhamashah Ward, Naya Mangal Bazar, Gudhiyari, Raipur, P.S. Gudhiyari, Tahsil & District Raipur, Chhattisgarh
2. Minor Suruchi Banjare D/o Late Sanjay Banjare, Aged About 2 Years, Through Her Natural Guardian Mother Smt. Mamta Banjare, Wd/o Late Sanjay Banjare, Caste Satnami, Permanent R/o Village Sinodha, Post Office Sikari, Kesali, P.S. Bhatapara, Tahsil Simga, District Baloda Bazar- Bhatapara, Chhattisgarh, Presently Resided At- C/o Shri Gyani Lahre, Ward No.11, Danweer Bhamashah Ward, Naya Mangal Bazar, Gudhiyari, Raipur, P.S. Gudhiyari, Tahsil & District Raipur, Chhattisgarh

... Appellants

Versus

1. Santosh Kumar Sharma S/o Late Mahendra Kumar Sharma, Aged About 38 Years R/o Naya Kanji House, Patelpara Kumhari, Police Station Kumhari, Tahsil- Bhilai 34, District Durg, Chhattisgarh (Driver Of Truck No. CG04JC7318, Period Of Driving License Up To 02.09.2015, Driving License No. CG0419970005678)
2. Smt. Suman Devi Kela Wd/o Late Parmanand Kela, Aged About 43 Years R/o 10/A Sahkari Road 3 Chaube Colony, Raipur, Chhattisgarh, Proprietor M/s Madhu Fertilizers Limited, Durga College Complex, Raipur, Chhattisgarh, (Owner Of Truck No. CG04JC7318)
3. Manager, National Insurance Company Limited, Raipur, Chhattisgarh (Insurer Of Truck No. CG04JC7318- Period Of Insurance Up To: 12.09.2014)
4. Radhelal Banjare S/o Late Baghela Banjare, Aged About 60 Years Caste Satnami, R/o Village Bamhnidih, Police Station Simga, District Baloda Bazar-Bhatapara, Chhattisgarh
6. Smt. Dulesiya Banjare W/o Shri Radhelal Banjare, Aged About 57 Years Caste Satnami, R/o Village Bamhnidih, Police Station Simga, District Baloda Bazar-Bhatapara, Chhattisgarh

... Respondents

For Appellants	:	Mr. Malay Kumar Bhaduri, Advocate.
For Respondent No.1	:	None appears.
For Respondents No.2	:	Mr. Amiyakant Tiwari, Advocate.
For Respondent No.3	:	Mr. B.N. Nande, Advocate.
For Respondents No.4 & 5	:	Mr. Arvind Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/07/2017

1. The issue which is to be considered in the present appeal as of now is, whether the appeal in its present form would be maintainable or not.

2. The facts relevant for adjudication of this appeal are that the deceased in the instant case, namely, Sanjay Banjare, met with an accidental death on 4.5.2014. The parents of the deceased Sanjay Banjare, that is the Respondents No. 4 & 5 herein, initiated a proceeding under Section 166 of the Motor Vehicles Act before the Sixth Additional Motor Accidents Claims Tribunal, Raipur, where the case was registered as M.A.C.T. No. 741 of 2014. Pending the dispute before the Sixth Additional Motor Accidents Claims Tribunal, Raipur, the matter was referred to the National Lok Adalat which was held on 12.9.2015. In the National Lok Adalat, the parties to the claim arrived at a settlement and as per compromise an amount of Rs.7,30,000/- was awarded in favour of respondents No. 4 & 5, with a condition that in the event if the said amount is not deposited within two months then the same shall carry interest at the rate of 6% per annum from the date of award.

3. The appellants before this Court claim themselves to be the widow and children of deceased Sanjay Banjare. They were not aware of the proceedings drawn under Section 166 of the Motor Vehicles Act before the Sixth Additional Motor Accidents Claims Tribunal, Raipur, by the respondents No. 4 & 5 herein. The appellants herein were not made as a party in the said claim application filed by the respondents No.4 & 5. The said claim application was filed by respondents No.4 & 5 suppressing the fact that the deceased Sanjay Banjare had a wife and child also.

4. Meanwhile, the appellants herein filed a separate claim application under Section 166 of the Motor Vehicles Act seeking for compensation on account of the accidental death of the deceased Sanjay Banjare. In the said claim application, the parents of the deceased were also impleaded as a party. The said claim application was registered as Claim Case No. 610 of 2015 and came up for hearing before the Third Additional Motor

Accident Claims Tribunal, Raipur, which vide its order dated 19.12.2016 refused to entertain it on the ground that since the claim application of the father and mother of the deceased Sanjay Banjare has already been entertained on an earlier date and in which an award has also been passed by the Lok Adalat, the Tribunal does not have the power to further entertain the second claim application and has given the liberty to the appellants herein to move appropriate application before the same Court seeking for apportionment of the amount awarded by the National Lok Adalat vide its award dated 12.9.2015.

5. Against the said order dated 19.12.2016, the appellants herein preferred an appeal under Section 173 of the Motor Vehicles Act which has been registered as M.A.(C). No. 429 of 2017 and which still is pending before this Court for adjudication. Meanwhile, the instant appeal has been filed under Section 173 of the Motor Vehicles Act challenging the award dated 12.9.2015 passed by the National Lok Adalat. An objection has been raised so far as the locus of the present appellants in challenging the present appeal as also the maintainability of the appeal in view of the award under challenge being one passed by the Lok Adalat.

6. What is primarily to be considered is that the award under challenge is one dated 12.9.2015 which has been passed by the Lok Adalat and that the award of the Lok Adalat passed is one under Section 21 of the Legal Services Authorities Act, 1987. For ready reference, Section 21 of the said Act is reproduced below:

“21. Award of Lok Adalat. – (1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870.

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.”

A plain reading of sub-section 2 clearly reflects that no appeal can be maintainable against the award passed by the Lok Adalat and the same attains finality.

7. In the event if the present appeal under Section 173 of the Motor Vehicles Act preferred by the Appellants is entertained, the same shall be in direct conflict with sub-section 2 of Section 21 of the Legal Services Authorities Act, 1987.

8. Though this Court is of the opinion that if the appeal would had been by the Appellants only against an award passed by the Claims Tribunal in spite of the Appellants not being a party to the proceeding below, the appeal would had been maintainable, as under Section 173 of the Motor Vehicles Act the term used is any person aggrieved could have approached the appellate Court in Appeal bringing within it, the Appellants as well. However, since the award under challenge is one which has been passed by the Lok Adalat, entertaining the appeal would be in direct contradiction of sub-section 2 of Section 21 of the Legal Services Authorities Act, 1987, which perhaps would not be proper, legal and justified.

9. Thus, in the opinion of this Court, the option available to the Appellants would be that of availing the writ jurisdiction for ventilating their grievance. This view of this Court gets further strengthen from a recent decision of this Court passed in Writ Petition (227) No. 486 of 2016, decided on 21.10.2016, wherein this Court in a writ petition exercising supervisory jurisdiction had set aside/quashed the order passed by the Lok Adalat declaring it to be null and void and *non est*. As such the powers which are conferred on a writ Court may not be exercisable by this Court

in the course of exercising the powers under Section 173 of the Motor Vehicles Act.

10. In view of above, reserving the liberty to the Appellants to avail writ jurisdiction for challenging the impugned award, the present appeal in its present form is not maintainable and the same is accordingly dismissed.

11. In view of the fact that the appeal is not maintainable, subject to the Appellants furnishing the photocopy of the impugned award, certified copy of the same shall be returned back to them for availing appropriate remedies under the law.

Sd/-
(P. Sam Koshy)
Judge

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