

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.19 OF 2019

Paul Chadda & anr. ... Applicants

Versus

Sanjay S. Usgaonkar ... Respondent

Mr. Shivraj Gaonkar, Advocate for the Applicants.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Kamat Ghanekar, Advocate for the Respondent.

Coram :- C. V. BHADANG, J.
Date :- 10th July 2019

ORAL ORDER

1. The challenge in this revision application is to the order dated 23.01.2019 passed by the learned Civil Judge, Junior Division at Panaji in Regular Civil Suit No.81/2018/C. By the impugned order, an application, exhibit 7, filed by the applicants for rejection of the plaint under Order VII Rule 11 (d) of the Civil Procedure Code (CPC, for short), has been dismissed.

2. The brief facts are that the respondent owns a Suzuki Ciaz Car bearing registration no.GA-07-L-1350. On 04.06.2018, at about 4.15 p.m., the said car was involved in an accident when one Mr. Dinesh, who was driver of the petitioners, on their Hyundai i20 Car, bearing registration

no.GA-03-P 3071, dashed into the car of the respondent causing substantial damage to the rear portion of the car of the respondent. It is the material case of the respondent that there was a telephonic conversation, in which the applicant no.1 assured the respondent to pay the charges for the repairs of the said car. The Suzuki Service Centre at Chowgule Industries Pvt. Ltd., had estimated the expenses at Rs.14,000/- for necessary repairs. After the repair works were carried out eventually a bill of Rs.12,600/- was raised which the respondent has paid in cash. It is the material case that subsequently the applicant no.1 declined to pay the amount of Rs.12,600/- to the respondent.

3. It is in these circumstances that the respondent has filed the aforesaid Civil Suit against the applicants for recovery of an amount of Rs.5,12,600/- which comprises of, (i) the actual expenses of repairs of Rs.12,600/-, (ii) the loss suffered by the respondent on account of the fact that he was put to inconvenience as the car was not available for four days when it was under repairs and (iii) on account of the respondent having suffered mental agony.

4. The applicants filed application, exhibit 7, for rejection of the plaint under Order VII Rule 11(d) of CPC on the ground

that the suit is barred under the provisions of Section 175 read with Section 165 of the Motor Vehicles Act 1988, (Act, for short), as the claim in the suit which is arising out of the use of the motor vehicle is exclusively triable by a Claims Tribunal constituted under Section 165 of the said Act.

5. The application was opposed on behalf of the respondent on the ground that the claim in the suit is essentially based on the breach of the promise by the applicant no.1 to bear the charges for repairs. It was contended that the jurisdiction of the Civil Court which is a Court of plenary jurisdiction under Section 9 of CPC, cannot be said to be barred in such a case.

6. The learned Trial Court by the impugned order has dismissed the application on the ground that the suit is one for recovery of money of Rs.12,600/- which was agreed and promised to be paid by the petitioners. In the opinion of the learned Trial Court, a reading of the plaint as a whole does not show that it is barred under the provisions of the Act particularly when the compensation in respect of mental agony cannot be granted by the Claims Tribunal.

7. I have heard Mr. Gaonkar, the learned Counsel for the applicants and Mr. Sudin Usgaonkar, the learned Senior Counsel for the respondent. Perused record.

8. Mr. Gaonkar, the learned Counsel for the applicants has placed strong reliance on the decision of this Court in the case of **Kadamba Transport Corporation Ltd. vs. Rosy Braganza, 2007 (6) Mh.L.J. 142**, in order to submit that any claim for compensation in respect of accident arising out of the use of motor vehicles is exclusively triable by the Claims Tribunal and in respect of such claims, the jurisdiction of the Civil Court is barred. Reliance is then placed on the decision of the Punjab and Haryana High Court in the case of **Satyavir vs. Satbir Singh & Ors., 2010 SCC Online P&H 1494**, in which the Punjab and Haryana High Court has taken a similar view. Lastly, reliance is placed in the decision of the Supreme Court in the case of **Kaushnuma Begum (Smt) & Ors. vs. New India Assurance Co.Ltd. & Ors. (2001) 2 SCC 9**, in order to submit that the Claims Tribunal constituted under Section 165 of the Act can entertain a claim of compensation on all such permissible heads where the claim is in respect of an accident arising out of the use of the motor vehicle/s.

9. The learned Counsel for the applicants has submitted that the Trial Court was in error in properly considering the law laid down in the decision of this Court in the case of **Kadamba Transport** (supra) and **Satyavir** (supra). It is submitted that the reliance placed by the Trial Court on the decision of the Kerala High Court in the case of **General Manager, Kerala State Road Trans. Corpn. vs. Saradamma AIR 1989 Kerala 23**, is misplaced as the said case is clearly distinguishable on facts.

10. Mr. Usgaonkar, the learned Senior counsel for the respondent has supported the impugned order. It is submitted that the claim in the suit is broadly under three heads : (i) with reference to the expenses incurred for repairs i.e. Rs.12,600/-, (ii) The loss of business as the respondent was deprived of the use of his car for four days during which the car was under repairs; and (iii) On account of the mental agony suffered by the respondent in the entire matter and owing to "unscrupulous and obnoxious behavior" of the petitioners.

It is submitted that the claim on the latter two heads cannot be entertained or tried by the Claims Tribunal and the cause of action cannot be split and, therefore, the Civil Court

was justified in entertaining the suit and in refusing to reject the plaint. The learned Counsel has placed reliance on the decision of Kerala High Court in the case of **General Manager, Kerala State Road Trans. Corpn.** (supra) and the decision of the Madhya Pradesh High Court in the case of **Rajkumar vs Mahendra Singh & Ors., AIR 1985 Madhya Pradesh 4**, in order to submit that the Claims Tribunal cannot entertain a claim for compensation for “loss of business” on account of the damaged vehicle remaining idle during the period of its repairs.

11. I have carefully considered the rival circumstances and the submissions made.

12. The Claims Tribunals are constituted under Section 165 of the Act, for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Section 166 of the Act provides for an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165, being made to the Claims Tribunal.

13. Section 175 of the Act which is relevant for the purpose reads thus :

“Section 175. Bar on jurisdiction of Civil Courts –

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.”

It can thus clearly be seen that where any Claims Tribunal has been constituted in any area, no Civil Court shall have jurisdiction to entertain any question relating to claims for compensation which are required to be adjudicated upon by the Claims Tribunal. Thus, the claims for compensation, in respect of accidents arising out of the use of the motor vehicles can be exclusively entertained by the Claims Tribunal constituted under Section 165 of the Act. Consequently, the corresponding jurisdiction of the Civil Court to entertain a suit in respect of such claims is expressly barred by virtue of Section 175 of the Act.

14. The respondent is trying to extricate himself out of the effect of Section 175 of the Act on two grounds (i) that the suit is essentially for enforcement of the promise which was allegedly held out by the petitioner to bear the expenses of repairs and, (ii) the claim insofar as relating to the loss of business/inconvenience for the period for which the vehicle was idle being under repairs and the claim on account of mental agony cannot be entertained by the Claims Tribunal.

15. In my considered view, none of these contentions can be accepted. Even according to the respondent, the alleged agreement by which the petitioner no.1 had expressed willingness to bear expenses of repairs would only relate to the expenses to Rs.12,600/-. It is not the case made out that there was any agreement to pay compensation under any other head including loss of business or mental agony. It cannot be disputed that the very basis of the entire claim of compensation under various heads made by the respondent is in respect of the damage suffered by his vehicle in an accident of the nature specified in Section 165 of the Act namely an accident arising out of the use of motor vehicle. Once the foundation on the basis of which the compensation is claimed under the various heads arises out of such an accident (of the nature specified under Section 165 of the Act), it is the Claims

Tribunal which will have exclusive jurisdiction to entertain the claim for compensation and not the Civil Court.

16. This Court in the case of **Kadamba Transport Corporation** (supra) has held that a Civil Court does not have jurisdiction to entertain a question relating to a claim for compensation which is required to be adjudicated by the Claims Tribunal. Similar view is expressed by the Punjab and Haryana High Court in the case of **Satyavir** (supra).

17. The Trial Court, in my considered view, is not right in holding that the reliefs sought in the suit are not “covered” under the Motor Vehicles Act. Reliance placed on the decision of the Kerala High Court in the case of **General Manager** (supra), is equally misplaced. That was a case arising out of a claim under Section 110 of the Motor Vehicles Act 1939, (the old Act). It is significant to note that under the proviso to Section 110 of the old Act, if the claim for compensation was in respect of damage to property exceeding Rs.2,000/-, the claimant had an option to refer the claim to a Civil Court and if such claim was made before the Civil Court, the Claims Tribunal was not entitled to entertain any question relating to such claim. A provision similar to proviso to Section 110 of the old Act is conspicuously absent in the Act of 1988.

18. The decision of the Kerala High Court in the case of **General Manager** (supra), is clearly distinguishable on facts.

19. The decision in the case of **Rajkumar** (supra) of the Madhya Pradesh High Court is also one arising under the old Act. Be that as it may, it is neither necessary nor appropriate to go into the question as to competence of any such claim once it is found that the basis of claiming such compensation is an accident arising out of the use of motor vehicles which is exclusively triable by the Claims Tribunal constituted under Section 165 of the Act. It is trite that a thing which cannot be directly done cannot be achieved indirectly. Thus, if the very basis of the claim is an accident arising out of the use of the motor vehicles where the jurisdiction of the Civil Court is barred, the Civil Court cannot assume jurisdiction on the ground that the claim is in the nature of the breach of promise to pay the compensation. At the cost of repetition, it needs to be emphasised that that the underlying basis for such claim is an accident arising out of the use of the motor vehicle. Thus, the impugned order, in my considered view, cannot be sustained.

20. In the result, the following order is passed :

ORDER

- (i) The Civil Revision Application is allowed.
- (ii) The impugned order is hereby set aside.
- (ii) The application, exhibit 7, filed by the respondent is allowed.
- (iii) The plaint in Regular Civil Suit No.81/2018/C is rejected under Order VII Rule 11 of the Civil Procedure Code.
- (iv) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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