Meena

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.9 OF 2021
WITH
CIVIL APPLICATION NO.18 OF 2021
IN
APPEAL FROM ORDER NO.9 OF 2021
WITH
MISC. CIVIL APPLICATION NO.1856 OF 2021(Filing No)
IN
APPEAL FROM ORDER NO.9 OF 2021

MANGALDAS YESHWANT PRABHU ...Appellant

VS

RANAJANA PRALHAD JAGTAP (EXPIRED) AND 6 ORS ...Respondents

Mr. A.D. Bhobe and Ms. Annelise Fernandes, Advocates *for the Appellant.*

Mr. Suraj Naik, Advocate *for the respondent no.7.*

CORAM: MANISH PITALE, J

DATED: 22nd November, 2021

P.C.

1. By this appeal, the appellant i.e. the owner of an offending vehicle has approached this Court challenging order dated 27/02/2020 passed by the Motor Accidents Claim Tribunal, North Goa, whereby an application filed on behalf of the appellant for setting aside ex-parte judgment and award dated 29/11/2014, was dismissed.

2. The facts in brief leading to filing of the present appeal are that on 31/01/2009, an accident took place in which a tipper truck bearing registration No.GA05-T-0674 was involved in an accident, resulting in the death of the victim. The original claimants i.e. respondent Nos.2 to 5 approached the Tribunal for grant of compensation.

3. The Tribunal issued notices in the Claim Petition. By award dated 29/11/2014, the Claim Petition was allowed and it was held that the original claimants were entitled to compensation of Rs.2,87,000/- @ 9% per annum interest from 16/04/2010 i.e. the date of application, till actual payment. The Tribunal held that the Insurance Company i.e. respondent No.7 before this Court was not liable to make the payment and it was only the appellant i.e. the owner of the vehicle who was liable to make the payment, for the reason that the Insurance Company had placed on record the fact that the Insurance Policy was cancelled/not renewed as the cheque issued by the appellant was allegedly dishonoured.

4. The original claimants put the award to execution and according to the appellant, when he received notice of execution proceedings sometime in September, 2016, that he became aware for the first time about the aforesaid Award dated 29/11/2014, passed by the Tribunal.

5. In this backdrop, the appellant moved an application for setting aside the ex-parte award along with an application for condonation of delay in moving the said application.

6. By order dated 15/01/2018, the Tribunal allowed the application for condonation of delay, subject to payment of costs of Rs.10,000/- to the original claimants. While allowing the application, the Tribunal accepted the contentions raised on behalf of the appellant that he had approached the Branch Manager of the Insurance Company and thereafter, the Advocate representing the Insurance Company after receiving the notice of the Claim Petition filed before the Tribunal. It was claimed that the Branch Manager of the Insurance Company as well as the Advocate representing the Company had assured the appellant that there was no need to engage a separate Counsel as the interest of the appellant would be taken care of by the Insurance Company itself. It was claimed that a valid insurance policy in possession of the appellant was handed over to the Branch Manager of the Insurance Company.

7. While allowing the application for condonation of delay, the Tribunal accepted the contentions raised on behalf of the appellant and allowed the application.

8. But, by the impugned order dated 22/02/2020, the Tribunal dismissed the application for setting aside the ex-parte award. It was held that the appellant was indeed served with a notice about the proceedings before the Tribunal and that he had appeared in person before the Tribunal in the said proceedings and that no ground was made out for justifying the prayer made in the said application.

9. Mr. A.D. Bhobe, learned Counsel appearing for the appellant submitted that according to the appellant, there was indeed a valid insurance policy at the time when the accident took place and that therefore, the Tribunal was not justified in foisting the entire liability on the appellant. It was submitted that the aspect as to whether the insurance policy was valid or that it had been cancelled due to alleged dishonour of cheque issued by the appellant, was an issue which was required to be contested before the Tribunal. Due to the absence of the appellant before the Tribunal, there was no contest on the said aspect and the entire liability stood foisted on the appellant. It was submitted that when a valid insurance policy was very much in possession of the appellant, there was no reason why the appellant would not have contested the matter in right earnest before the Tribunal. It was further submitted that if an opportunity is granted to the appellant to support his contention that a valid insurance policy indeed existed at the relevant time, it would be in the interest of justice.

10. The learned Counsel appearing for the appellant further submitted that he was not pressing the allegations made against the Advocate who represented the Insurance Company before the Tribunal and that he was not supporting the reasoning adopted by the Tribunal while allowing the application for condonation of delay by order dated 15/01/2018, wherein certain observations were made about the concerned Advocate not having filed an affidavit before the Tribunal. It is vehemently submitted that it would be in the interest of justice if an opportunity is granted to the appellant to make good his submission that a valid insurance policy indeed existed at the relevant time. It was further submitted that the appellant is ready to abide by any conditions that this Court may impose while allowing the present appeal.

11. On the other hand, the learned Counsel appearing for respondent No.7 - Insurance Company submitted that there was ample material on record to indicate that at the relevant time no valid insurance policy was in existence. The allegations made against the manager of the Insurance Company and the Advocate of the said Insurance Company were unilaterally made on behalf of the appellant and the Tribunal in the present case was justified in passing the impugned order. It was submitted that the appellant had appeared twice in person before the Tribunal and therefore no ground was made out for setting aside the ex-parte award.

12. The original claimants i.e. the respondent Nos. 2 to 5 were served in this appeal, but they chose not to appear before this Court.

13. While issuing notice dated 09/03/2021, this Court had granted stay to the execution proceedings subject to the appellant depositing 50% of the awarded amount.

14. By subsequent order dated 06/07/2021, this Court directed release of 50% amount to the original claimants in the said pending proceedings. It was directed that the executing Court will not proceed further in the execution until disposal of the appeal and that release of the amount would be subject to the order that may be passed in the present appeal.

15. In the present case, this Court is of the opinion that the allegations levelled against the Advocate representing the respondent No.7-Insurance Company before the Tribunal are unilateral in nature. The appellant claimed that the Advocate representing the Insurance Company, apart from the Branch Manager of the said Insurance Company, had told the appellant that there was no need to engage a separate Counsel because the interest of the appellant would be taken care of. It was alleged that a valid insurance policy was handed over to the Branch Manager as well as the Advocate representing the Insurance Company. This Court is of the opinion that the nature of allegations made by the appellant are of serious nature and that such allegations ought not to have been accepted casually by the Tribunal while passing the order dated 15/01/2018, allowing the application for condonation for the delay.

The learned Counsel appearing for the appellant also made it clear that the said allegations are not pressed in this appeal.

16. Be that as it may, this Court is concerned with the correctness or otherwise of the impugned order passed by the Tribunal whereby the application for setting aside the ex-parte award has been dismissed. While supporting the contentions raised in the application for setting aside ex-parte award, the learned Counsel for the appellant emphasised that it is the firm belief of the appellant that the valid insurance policy was indeed existing at the time of the accident on 31/01/2009. According to the learned Counsel for the appellant, it does not appeal to reason that despite having a valid insurance policy in his favour, the Appellant would not have appeared before the Tribunal and brought the same to the notice of the Tribunal. It is submitted that the insurance company appears to have contended before the Tribunal that no valid insurance policy was existing and it is for this reason that the entire liability was foisted on the appellant.

17. This Court has examined the material on record. It is clear that the appellant did appear twice in person before the Tribunal and thereafter he did not appear in the proceedings till the Award was passed by the Tribunal foisting the entire liability on the appellant. A perusal of the Award dated 29/11/2014 shows that in paragraph 30, a specific finding is rendered that the insurance policy in question was revoked/terminated because the cheque issued by the appellant had been dishonoured. This is certainly an adverse finding against the appellant. It is the case of the appellant that he never received any notice or communication from the insurance company about dishonour of the cheque and according to him, the insurance policy was valid. Since the appellant could not remain present before the Tribunal, the said aspect of the matter remained uncontested, as a result of which the insurance company was exonerated from liability, while the entire liability was foisted on the appellant.

18. This Court is of the opinion that in the interest of justice, it would be appropriate that the appellant be granted an opportunity to contest the assertion of the insurance company that the insurance policy was either revoked or terminated on the ground that the cheque issued by the appellant towards the premium of the said policy was dishonoured.

19. To that extent the Tribunal in the present case appears to have committed an error in dismissing the application for setting aside the ex-parte Award.

20. But, the present appeal cannot be allowed without ensuring that the interest of the original claimants is taken care of. This Court is of the opinion that the awarded amount is only Rs.2,87,000/- along with 9% interest. It is an admitted position that the appellant has already deposited 50% of the amount alongwith interest, which was directed to be released in favour of the original claimants.

21. It would be in the interest of justice that as a precondition for the present appeal being allowed and an opportunity being granted to the appellant for contesting the matter before the Tribunal, the entire balance amount is deposited before the Tribunal by the appellant. The original claimants shall be permitted to withdraw the same, subject to further orders by the Tribunal.

22. In view of the above, the appeal is allowed. The impugned order dated 27/02/2020, passed by the Tribunal is set aside. Consequently, the application for setting aside the ex-parte award dated 29/11/2014 is allowed.

23. This is subject to the appellant depositing balance 50% amount along with the interest as awarded by the Tribunal in the said award dated 29/11/2014, before the Tribunal within a period of four weeks from today. The said amount upon deposit shall be released in favour of the claimants, subject to further orders that may be passed by the Tribunal.

24. The appellant will be granted an opportunity to contest the claim of the insurance company that the concerned insurance policy was either revoked or terminated. The Tribunal shall grant an opportunity to the parties to lead evidence in that regard, if necessary.

25. Considering the fact that the accident took place as far back on 31/01/2009, the Tribunal shall endeavour to decide the matter expeditiously and in any case within a period of three months from today.

26. It is reiterated that this Court has not appreciated the manner in which the Tribunal made comments about the Advocate representing the Insurance Company, on the basis of allegations made unilaterally on behalf of the appellant, while allowing the application for condonation of delay.

27. All pending applications stand disposed of.

MANISH PITALE, J.

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