

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4574 OF 2022

Iffco Tokio General Insurance Co. Ltd. Through Its Authorized Officer
Dadasaheb Dattu Tarte

VERSUS

Mahananda Vishwanath Gavane And Others

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Advocate for the Petitioner : Mr. Rathi Swapnil S.
Advocate for Respondent Nos.8 & 9 : Mr. A.V. Lavte

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CORAM : S.G. MEHARE, J.

DATED : JANUARY 03, 2024

PER COURT :-

1. Heard learned counsel for the petitioner and learned counsel for the respondent nos.8 and 9, the registered owner and the vehicle driver involved in the accident. None present for the claimants.

2. It is a case impugning the Award of the Lok Adalat on the ground that at the time of passing the Award before the Lok Adalat, the fact that in the policy, the risk of the pillion rider was not covered. The Insurance Company officer inadvertently could not specifically point out the no-risk cover in the policy as, on that day, more than 200 matters were settled before the Lok Adalat. It was not deliberately suppressed from the Lok Adalat. However, under the impression that the policy covers the risk of the pillion rider, the Award passed before the Lok Adalat. When this mistake was

discovered, an application was filed before the Tribunal. However, the Tribunal declined to set aside the Award for the reason that it has no jurisdiction. Hence, this petition.

3. Learned counsel for the petitioner would submit that such an Award may be set aside if passed inadvertently. The insurance policy of the vehicle involved in the vehicular accident does not cover the risk of the pillion rider. It was a third-party risk policy i.e. Act policy. It is placed on record. There is no dispute that the claimants were the legal heirs of the pillion rider who succumbed to the injuries in the vehicular accident. Therefore, the Award passed before the Mahalokadalat impugned before this Court may be set aside, and the Motor Accident Claim Petition may be restored to its original stage.

4. Learned counsel for respondent nos.8 and 9 has vehemently opposed the application, contending that such an award can only be challenged by filing a writ petition under Article 226/227 of the Constitution of India only on the ground of fraud and misrepresentation. He would rely on the case of K. Srinivasappa and others Vs. M. Mallamma and others, 2022 SCC Online 636. As against this, learned counsel for the petitioner relied on the case of Bhargavi Construction and another Vs. Kothakapu Muthyam Reddy and others, AIR 2017 SC 4428.

5. Considering the rival contentions of both parties, a small question in the given circumstances is: can the Award passed in the

Mahalokadalat be set aside, and mistakes committed on fact may be corrected? The High Court decided the case of K. Srinivasappa (supra) on the basis of the compromise recorded by the Lok Adalat. It was a suit for partition. They have settled their rights. Considering the facts of the case and relevant provisions as regards the compromise by the private parties to the suit, the Hon'ble Apex Court set aside the order of the High Court and restored the orders of the compromise, accepting the compromise before the Lok Adalat. As far as the case of Bhargavi Construction (supra) is concerned, the facts were that it was a suit for a specific performance of the contract. The suit was compromised before the Lok Adalat. Verifying the facts and with the consent of the parties, the Lok Adalat passed the Award under Section 21 of the Legal Services Authorities Act, 1987. Some of the respondents had filed the suit for declaration that the Award passed by the Lok Adalat was obtained by playing fraud/misrepresentation, and hence, the Award should be declared illegal, null and void and not binding on the plaintiffs in the said suit. The defendants had filed an application under Order 7 Rule 11(d) of the Code of Civil Procedure. The Trial Court rejected the plaint by invoking powers under clause (d) of Rule 11. The plaintiffs had filed an appeal before the High Court. The High Court allowed the appeal and restored the suit on its file. Under this premise, the Hon'ble Supreme Court, in para 25, has observed thus :

“25) The question arose before this Court (Three Judge Bench) in the case of State of Punjab (AIR 2008 SC 1209) (supra) as to what is the remedy available to the person aggrieved of the Award passed by the Lok Adalat under Section 20 of the Act. In that case, the Award was passed by the Lok Adalat, which resulted in the disposal of the appeal pending before the High Court relating to a claim case arising out of the Motor Vehicles Act. One party to the appeal felt aggrieved by the Award and, therefore, questioned its legality and correctness by filing a writ petition under Article 226/227 of the Constitution of India. The High Court dismissed the writ petition holding it to be not maintainable. The aggrieved party, therefore, filed an appeal by way of special leave before this Court. This Court, after examining the scheme of the Act, allowed the appeal and set aside the order of the High Court. This Court held that the High Court was not right in dismissing the writ petition as not maintainable. It was held that the only remedy available to the aggrieved person was to challenge the Award of the Lok Adalat by filing a writ petition under Article 226 or/and 227 of the Constitution of India in the High Court, and that too on very limited grounds. The case was accordingly remanded to the High Court for deciding the writ petition filed by the aggrieved person on its merits in accordance with law.

6. The law has been clearly set out that if there is any dispute about the Award passed in Lok Adalat, that may be challenged under Article 226 or 227 of the Constitution of India.

7. Considering the facts of the case and the involvement of public money, this Court is of the view that this is a fit case to exercise the powers under Article 227 of the Constitution of India. The policy on record explicitly expresses that the pillion rider was not covered.

To protect the public money and fix the responsibility on the proper person, the Court believes it is a fit case to consider the submissions. There appears to be no substance in the submission of the learned counsel for respondent nos.8 and 9.

8. For the above reasons, the following order is passed.

ORDER

- I) The petition is allowed.
- II) The Award passed in Mahalokadalat dated 11.12.2021 in Motor Accident Claim Petition No.94 of 2021 before the Member of the Motor Accident Claims Tribunal, Beed is set aside.
- III) The Motor Accident Claim Petition No.94 of 2011 is restored to its original position.
- IV) The learned Motor Accident Claims Tribunal, Beed, shall issue fresh notices to all concerned and decide the claim on merit.
- V) No order as to costs.
- VI) The amount deposited as per the Award of the Lok Adalat should be kept in fixed deposit for disbursement till the final Award.

(S.G. MEHARE, J.)