

Subhadra and Others Vs. Pankaj and Another

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Court : Karnataka Gulbarga

Decided On : Aug-07-2012

Judge : Dilip B. Bhosale & L. Narayana Swamy

Appeal No. : MFA No. 31609 of 2011 (MV)

Appellant : Subhadra and Others

Respondent : Pankaj and Another

Judgement :

(Prayer: This MFA Filed Under Section 173(1) of MV Act against the Judgment and award dated 3.6.2011 passed in MVC No.346/09 on the file of Motor Accident Claims Tribunal and Fast Track Court-I/II, Bijapur, wherein dismissing the claim petition and herein seeking compensation.)

Oral Judgment: (Dilip B. Bhosale J.)

This appeal is directed against the judgment and order dated 3.6.11 rendered by the presiding officer, FTC- I/II, Bijapur in MVC No.346/09, whereby the motor vehicles case (for short 'the claim petition') instituted by the appellant-claimants, under Section 166 of the Motor Vehicles Act (for short 'the Act'), has been dismissed on the ground of territorial jurisdiction.

2. The facts giving rise to this appeal, in brief, are that on 29.12.2008, while the deceased-Rajendra was travelling in a bus, bearing Registration No.MH-20-D-

9030, at about 7 a.m., met with an accident near Pirachi- Kurolli, on Pandharpur-Pune road in the State of Maharashtra. The bus, in which he was travelling collided with a truck bearing registration No.MH-12-EF-2210 coming from opposite direction in a rash and negligent manner. In the accident, Rajendra sustained serious injuries and died on the spot. At the relevant time, he was working as a Police Constable in the State of Maharashtra and was getting salary of Rs.10,000/- per month. Hence, the heirs and legal representations of Rajendra filed claim petition before the MACT, Bijapur.

3. Before the Tribunal, the respondent-Insurance Company challenged the claim petition on the ground of territorial jurisdiction, contending that the claimants are permanent residents of Maharashtra, and therefore, the claim petition instituted in this state deserves to be dismissed. In the claim petition, the claimants stated that they are residents of Adaki Galli, Bijapur, and therefore, the Tribunal has a jurisdiction to entertain their petition. They however, did not place any material whatsoever on record in support of their claim. Even before this Court, when we asked, learned counsel appearing for the appellants whether he has any document to show that the claimants have any connection with this State and/or they are residents of Bijapur or any part of this State, his reply was in the negative.

4. It has come on record that the deceased was in Government service in the State of Maharashtra. It is in this backdrop, the Tribunal after relying upon the unreported judgment of this Court observed in the concluding paragraph thus:

"It is pertinent to note that the petitioners have not at all produced any document to show that they are the natives of Bijapur district or Karnataka State. As could be seen from the entire documents produced by the petitioner, which reveals that the accident took place in Pandharpur. In view of MFA 1458/07 dated 15.11.2010 the Hon'ble High Court of Karnataka held that

"Unless the claimants produced proof for their permanent address either by way of election card or ration card or bank pass book or any other documents to satisfaction of the tribunal for his jurisdiction."

But in the instant case the petitioners have simply filed the claim petition and contending that they are resident of Bijapur, but they have not produced any document of proof for their residence to the satisfaction of the tribunal. It is pertinent to note as could be seen from the entire material produced by the petitioners which reveals that the accident took place at Pandharpur Dist:Solapur, the claimants resides at Solapur District, the deceased working as govt. servant in the state of Maharastra and which itself shows that the deceased was hailing from Maharastra. As per the dictum laid down by the their lordship in supra ruling, which is aptly applicable to the facts and circumstances of the case in hand. Therefore, viewing from any angle the claim petition filed by the petitioner is not maintainable on the ground of jurisdiction. Accordingly, I answer Issue Nos.1 and 2 in the negative."

5. It is not the case of claimants that either any one of them or all are having any business in this State. Similarly, it is not the case of the claimants that respondent/s is/are resident/s of this State. Admittedly, the accident occurred in the State of Maharashtra. In the backdrop of these facts, we have heard learned counsel for the parties.

6. Sri Babu H.Metagudda, learned counsel, at the outset, invited our attention to the judgment of Supreme Court in MANTOO SARKAR -vs- ORIENTAL INSURANCE COMPANY LTD. AND OTHERS (2009 Kant MAC 125 (SC) to contend that since a branch office of the respondent-Insurance Company is in Bijapur, the Tribunal at Bijapur has a jurisdiction to entertain the claim petition, as contemplated by Sub-Section (2) of Section 166 of the Act. He also placed reliance upon the judgment of this Court in ORIENTAL INSURANCE CO. LTD. BANGALORE -vs- SMT.PREMAKKA AND OTHERS 2012(3)KCCR 1823 (DB) in support of this contention. He submitted that in similar situation, the Division Bench of this Court dismissed the appeal of Insurance Company wherein the issue of jurisdiction was raised, considered and decided.

He did not urge any other contention. On the other hand, learned counsel appearing for the respondent-Insurance Company submitted that the provisions contained in Section 166(2) of the Act do not permit filing of claim petitions within

the local limits of whose jurisdiction the respondent-Insurance Company carries on its business.

7. At the outset, we would like to consider the provisions contained in Sub-section (2) of Section 166 of the Act. Section 166 deals with application for compensation. Sub-section (2), which deals with the jurisdiction of Tribunal, reads thus: "166. (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business/or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:"

(emphasis supplied)

8. From bare perusal of sub-section (2) of Section 166 of the Act, it is clear that the claimant is having four options, where he can file claim petitions. He can file it either before the claims Tribunal having jurisdiction over "the area in which the accident occurred", or before the Claims Tribunal within the local limits of whose jurisdiction the "claimant resides" or "carries on business" or within the local limits of whose jurisdiction the "defendant resides". The language employed in sub-section (2) make the intention of the legislature very clear. It confers the jurisdiction to the claims Tribunal within the local limits of whose jurisdiction "accident occurred", or "claimant resides" or "claimant carries on business" or "defendant resides".

8.1. It does not confer jurisdiction to the Tribunal within the local limits of whose jurisdiction the defendant carries on business. The legislature could have used the expression "carries on business" even in case of defendant, as is used for the claimants. The option is given to the claimant to file claim petition within the local limits of whose jurisdiction the defendant resides. Thus, the intent of the legislature is very clear which did not want to confer jurisdiction to the claims Tribunal within whose local limits the defendant/s "carries on business". 8.2. The language employed in sub-section (2) of Section 166 of the Act is plain/clear, unambiguous and susceptible to only one meaning/interpretation. We do not have a slightest

doubt in our mind, in holding that the claim petition cannot be instituted before the Tribunal within whose local limits the defendant-Insurance Company carries on business, unless the other requirements, contemplated by Sub-Section (2) of Section 166 of the Act, stand complied with. A claimant can institute a claim petition before the Tribunal within whose local limits the respondent/defendant resides, such as driver or owner of the vehicle. Thus, a plain reading of Section 166 (2) of the Act, in our opinion, supports the view taken by the Tribunal.

9. The Supreme Court in MANTOO SARKAR's case (Supra) considered the provisions contained in Sub- Section (2) of Section 166 of the Act, in regard to "Territorial jurisdiction" of a Tribunal. In that case, the MACT, over-ruled the objection as to its territorial jurisdiction and allowed the claim petition having regard to sub-section (2) of Section 166 of the Act. It was observed by the Tribunal that its jurisdiction is wide so as to cover even the local limits of the Tribunal within whose jurisdiction the Insurance Company is having a branch office at Nainital. It had awarded Rs.2,40,000/- in favour of the claimant. The High Court, however, allowed the appeal holding that the Tribunal did not have territorial jurisdiction to entertain the said claim petition. 9.1. In that case, the appellant was a resident of Pilibhit in the State of U.P. He being a migrant labourer would accept job wherever he would get and reside there. He, admittedly, had been working in Nainital District and residing there during the period of accident. The fact, he was a resident of Nainital in the State of Uttaranchal at the relevant time was neither denied nor disputed. 9.2. In this backdrop, the Supreme Court observed that the High Court, unfortunately, did not assign sufficient/cogent reasons as to how the Tribunal committed any illegality in holding that it had jurisdiction to entertain the claim petition. The Supreme Court also considered the provisions of Section 169 of the Act and observed that the provisions of the Code of Civil procedure under the Act has a limited application but in term of the rules 'save and except' any specific provision made in that behalf, the provisions of the Code of Civil procedure would apply. The Supreme Court also observed that the principles laid down in the CPC may be held to be applicable in a case of this nature. The Supreme Court also noticed in that case, that the respondents did not raise any question of jurisdiction although one witness each had been examined on behalf of the truck owner and the owner of the bus.

9.3. In that case, neither a question of lack of territorial jurisdiction was raised nor the question of any prejudice had been argued. The Supreme Court, then noticed that the 1st respondent who raised the issue of territorial jurisdiction could not show sufferance of any prejudice and therefore, the Supreme Court observed that if it had not suffered any prejudice or otherwise no failure of justice had occasioned, the High Court should not have entertained the appeal on the ground alone. Then, the Supreme Court proceeded to consider the territorial jurisdiction in the light of the provisions of CPC and observed thus:

"We cannot also lose sight of the fact that the appellant herein was a labourer. The justness or otherwise of the amount of compensation has not been disputed before us. If the High Court judgment is to be complied with, appellant would again have to initiate another proceeding either at Bareilly or Gurgaon or at Delhi or at Jabalpur. The same evidence would have to be Once again. The question of fact which was required to be determined in the proceeding before the Tribunal, namely whether the driver of the truck or the driver of the bus had been driving their respective vehicles rashly and negligently would have to be determined afresh. The factual finding recorded in this case is that the driver of the truck was driving the truck rashly and negligently. In our opinion, in case of this nature, we may even exercise our extraordinary jurisdiction under Article 142 of the Constitution of India."

9.4. After the aforesaid observations, the Supreme Court further observed that it is well settled that in a situation of this nature, the Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution of India R/w Article 136 thereof can issue such directions for doing complete justice to the parties. Thus, this judgment is of no avail to the appellants. The Supreme Court proceeded to allow the appeal for doing complete justice to the appellant, exercising its jurisdiction under Article 142 of the Constitution of India. Learned counsel appearing for the Insurance Company, based on this judgment, vehemently argued that, in fact, this judgment supports his contention that the Tribunal has no jurisdiction in the present case.

10. Our attention was also invited to the judgment of the Supreme Court in HARSHAD CHIMAN LAL MODI -VS- D.L.F. UNIVERSAL LTD. AND ANOTHER (AIR 2005 SC 4446) by Mr. Babu, H. Metagudda. We have perused this judgment. In fact, this judgment would help the Insurance Company which had taken, at earliest possible opportunity, the objection as to territorial jurisdiction. The Supreme Court in that case after considering the provisions of Section 21 observed that the objection as to territorial jurisdiction of the Court should be taken at earliest possible opportunity and in any case at or before settlement of issues.

11. In the present case, the objection as to jurisdiction was taken before the Tribunal. The Tribunal dealt with it in the impugned order. The Tribunal has not recorded its findings on merits of the case, though the issues were framed. In other words the Tribunal did not address the issues framed by it on merits. Merely because the issues were framed and reproduced in the impugned judgment, it cannot be stated that the objection was not raised at appropriate stage. Then, our attention was also invited to unreported judgment of this Court in MFA 31867/11 (SMT. SUNNABI AND OTHERS -vs- THE BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD. AND ANOTHER) rendered by the Division Bench on 11.1.2012. In that matter, the appeal was allowed and the matter was remanded to the Tribunal for fresh consideration, keeping it open to the Tribunal to frame an issue regarding territorial jurisdiction. In the present case, as observed earlier, the judgment of the Tribunal is devoted for deciding the issue of jurisdiction only.

12. This Court in Smt.PREMAKKA's case (Supra), after considering the provisions contained in Section 166 of the Act, in para-9 observed thus:

"9. In the instant case, the claimants are residing within the jurisdiction of Chitradurga and the accident also occurred within the jurisdiction of Chitradurga District. Therefore, it is contended that the claim petition filed before the Court of Small Causes/Addl. MACT at Bangalore City, was not maintainable. The Insurance Company has not questioned the jurisdiction of the Claims Tribunal at Bangalore, though it filed statement of objections. Admittedly, the vehicle in question was covered by insurance for the period from 18.3.2004 to 17.3.2005. Section 166 of the Motor Vehicles Act, 1988, gives option to the claimants to

choose Claims Tribunal and even on the basis of residence of defendant. The insurance policy in question was issued by the Oriental Insurance Company by its Branch Office at Hindupur. Since, the Oriental Insurance Company carries on business in Bangalore and within the jurisdiction of Court of Small Causes/MACT, the contention raised by the Insurance Company as to the jurisdiction of the Tribunal, holds no water.

12.1. It is pertinent to note that the Division Bench was considering the appeal against the order of Tribunal awarding compensation to the claimants. The claimants were the residents of this State. The Insurance Company had not questioned the jurisdiction of the claims Tribunal at Bangalore and in this situation the aforesaid observations were made. We therefore, agree with the submission advanced by the learned counsel for the respondent-Insurance Company that the issue raised in the present writ petition was not raised, considered and decided in PREMAKKA's case, and that the judgment is per-incuriam. It was vehemently submitted that the provisions contained in Sub-Section (2) of Section 166 of the Act were not analysed since the question was not raised, as has been done in the present case.

13. In this connection, we would like to make reference to the judgment of the Supreme Court in MAYURAM SUBRAMANIAN SRINIVASAN vs. C.B.I [(2006) 5 SCC 752]. In paragraphs 10, 11 and 12 of the report, the Supreme Court observed thus: "10. In State v. Ratan Lal Arora it was held that where in a case the decision has been rendered without reference to statutory bars, the same cannot have any precedent value and shall have to be treated as having been rendered per incuriam. The present case stands on a par, if not on a better footing. The provisions of Section 439 do not appear to have been taken note of.

11. "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law", as held in *Young v. Bristol Aeroplane Co. Ltd.*, is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution of India,

1950 (in short "the Constitution") which embodies the doctrine of precedents as a matter of law. The above position was highlighted in *State of U.P. v. Synthetics and Chemicals Ltd.* To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. The position was highlighted in *Nirmal Jeet Kaur v. State M.P.*

12. The question was again examined in *N. Bhargavan Pillai v. State of Kerala*. It was observed in para 14 as follows: (SCC pp. 223- 24)

14. Coming to the plea relating to benefits under the probation Act, it is to be noted that Section 18 of the said Act clearly rules out application of the Probation Act to a case covered under Section 5(2) of the Act. Therefore, there is no substance in the accused-appellant's plea relating to grant of benefit under the probation Act. The decision in *Bore Gowda* case does not even indicate that Section 18 of the Probation Act was taken note of. In view of the specific statutory bar, the view, if any, expressed without analysing the statutory provision cannot in our view be treated as a binding precedent and at the most is to be considered as having been rendered per incuriam. Looked at from any angle, the appeal is sans merit and deserves dismissal which we direct."

13.1. In *Narmada Bachao Andolan v. State of Madhya Pradesh and Anr.* (AIR 2011 SC 1989), the Supreme Court in paragraphs 60 and 61 observed thus: PER INCURIM - Doctrine:

"60. "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratum. The Courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered, in ignorance of a Statute or other binding authority. While dealing with observations made by a seven Judges' Bench in *India Cement Ltd. etc. etc. v. State of Tamil Nadu etc. etc.*, AIR 1990 SC 85, the five Judges' Bench in *State of West Bengal v. Kesoram Industries Ltd. and Ors.*, (2004) 10 SCC 201: (AIR 2005 SC 1646: 2004 AIR SCW 5998), observed as under:

"A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say

only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, A statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court."

61. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

14. It is thus clear that if there is an error of law occurring in a judgment, apparently committed by mistake or through inadvertence, such judgment should not be misunderstood as declaration of law by the Court. Similarly, if the judgment is delivered in forgetfulness of some statutory provision, or a statement of law caused by inadvertence or conclusion that has been arrived at without any reasons, or rendered without analysing the relevant provision, it cannot be treated as a binding precedent and at the most is to be considered as having been rendered per-incuriam. In other words, if intricacies of relevant provisions are either not noticed by the Court or brought to the notice of Court and if the view is expressed without analysing the said provision, such view cannot be treated as binding precedent. It appears, in the facts of Smt. PREMAKKA's case (Supra), the learned Judges did not analyse Sub-Section (2) of Section 166 of the Act, which clearly demonstrates that a claim petition cannot be instituted before the Tribunal, within whose local limits, the defendant-Insurance Company carries on business.

14.1. We find ourself in agreement with the submission advanced by learned counsel for the respondent-Insurance Company that the provisions contained in Sub-Section (2) of Section 166 of the Act was either not analysed by the learned judges or the intricacies of the said provision were not noticed/brought to the notice of the Court in Smt. PREMAKKA's case (Supra). It is apparent, in Smt.

PREMAKKA's case, the provisions contained in Sub-Section (2) of Section 166 of the Act was not analysed and, therefore, in our opinion, it cannot have any precedent value relatable to a mandatory requirement of Sub-Section (2) of Section 166 of the Act. Under this provision, the jurisdiction is conferred on the Tribunal, within the local limits of whose jurisdiction, the defendant resides and not carries on business.

15. At this stage, we would like to say something about the manner in which such claim petitions are filed in this State. For filing claim petitions in this State, the claimants do not require to pay court fee, whereas in the neighbouring states, in particular, the State of Maharashtra, the claimants require to pay court fee. That it appears to be the reason why the claimants either on their own or at the instance of some interested persons approach MACT in this State. During this roster, we came across a case (MFA No.31622/2011, Smt. Rekha W/o Sukhadev Dharekar and others versus Sadashiv S/o Kashinath Tingare and another) where a fabricated document namely 'election card' was placed on record to show that the claimants were residents of Bijapur, only to maintain the claim petitions before the Tribunal, at Bijapur. We are informed, in that case, in pursuance of the order dated 25.07.2012, an offence has been registered and the investigation is in progress. We have noticed that claimants go to the extent of either using fabricated documents or to make false statements on affidavit, without producing any proof/document in support, to show that they are residents of this State.

16. Insofar as this case is concerned, the claimants could not and did not produce any material whatsoever either before the Tribunal or before this Court to show that they are residents of this State or they are having business in this State. Insofar as the accident is concerned that, admittedly, occurred in the State of Maharashtra. The driver and the owner of the vehicle are from Maharashtra. If the jurisdiction is conferred on or recognized of the claims Tribunal, within whose local limits, the Insurance Company carries on business, perhaps that will create a chaotic situation. The Insurance Companies have their offices/branch offices all over the country. That seems to be the reason why the legislature, in sub-section (2) of Section 166 of the Act, did not confer jurisdiction on the claims Tribunal within whose local limits the defendant i.e., the Insurance Company "carries on

business". In the result, we are satisfied that there is no merit in the appeal. Hence, the appeal is dismissed. Dismissal of the appeal, however shall not preclude the claimants from filing claim petitions before the appropriate Tribunal, if so advised.

The Additional Registrar General, Circuit Bench at Gulbarga is directed to forward copies of this judgment to all Motor Accident Claims Tribunals in the state of Karnataka forthwith.

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