

Gyan Swaroop Vs. the Additional District Judge and Others

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Court : Allahabad

Decided On : Jan-08-2013

Judge : Sudhir Agarwal

Appeal No. : Writ C No. - 19827 of 2012

Appellant : Gyan Swaroop

Respondent : The Additional District Judge and Others

Advocate for Pet/Ap. : Sri. Arvind Kumar

Judgement :

Sudhir Agarwal, J.

1. The petitioner alongwith his sister, Smt. Nirmala Devi filed a Motor Accident Claim Petition No. 07 of 2009 before Motor Accident Claims Tribunal/Additional District Judge, Court No. 7, Aligarh (hereinafter referred to as the "Tribunal") impleading one Sandeep Sharma son of Sri Satish Chandra Sharma and the Manager, The Oriental Insurance Co. Ltd. as defendants.

2. The facts, in brief, are that another brother of claimant met an accident on 05.09.2008 while travelling in Bus No. UP 85 E-9372 and died. Hence, claim was filed for compensation. The petition was allowed by Tribunal and judgment was delivered by respondent no. 2, Sri Rajaram Saroj, Additional District Judge, Aligarh, the Presiding Officer of Tribunal on 01.08.2011. The Insurance Company

came up in appeal, i.e., First Appeal From Order No. 3515 of 2011. The appeal was admitted on 01.11.2011 and Court passed following interim order:

"Heard on the question of grant of interim relief.

Having regard to the facts and circumstances of the case and having considered the submissions made by Sri Arvind Kumar, learned counsel for the appellant and Shri Anshul Kumar Singhal holding brief for Shri V.K. Agrawal, learned counsel for the claimant-respondent nos.1 and 2, it is directed that the operation of the impugned Award dated 1.8.2011 will remain stayed until further orders of the Court, provided within six weeks from today, the appellant deposits the entire amount awarded under the impugned Award together with interest thereon before the Motor Accidents Claims Tribunal, Aligarh.

The amount so deposited by the appellant will be paid/invested as under:-

- (1) Out of the amount awarded respectively to each of the claimant-respondent nos. 1 and 2 under the impugned Award, Rs. 1,00,000/- each will be paid respectively to each of such claimants-respondents without furnishing any security.
- (2) Balance amount awarded respectively to each of the claimant-respondent nos. 1 and 2 under the impugned Award, will be invested in maximum interest-bearing Fixed Deposit in a Nationalized Bank, renewable from time to time, in the respective name of each of such claimants-respondents.

The amounts invested in Fixed Deposits, as per the directions given above, will not be permitted to be withdrawn by the claimant-respondent nos.1 and 2 without leave of this Court. However, 50% of the periodical interest accruing on such Fixed Deposits, will be permitted to be withdrawn by the concerned claimant-respondent nos.1 and 2, as and when the same accrues. Balance 50% of the periodical interest accruing on such Fixed Deposits, will continue to be reinvested in the respective Fixed Deposits.

The amount of Rs. 25,000/- deposited by the appellant while filing the present Appeal, will be remitted to the Tribunal for being adjusted towards the deposit to be made by the appellant, as directed above.

In the event of default on the part of the appellant in making the deposit as directed above, this interim order will stand automatically vacated.

Counter affidavit and rejoinder affidavit may be exchanged between the parties by the next date fixed in the matter.

List on 9.5.2012."

3. The petitioner moved an application dated 06.01.2012 before Trial Court stating that he is changing counsel due to his (counsel's) unprofessional conduct and filed Vakalatnama of another counsel, Chaudhary Rajeev Kumar, Advocate to conduct further pairavi in the case. The permission of court to accept Vakalatnama of Sri Chaudhary Rajeev Kumar was also sought.

4. It appears that Sri J.P. Singh, Advocate, respondent no. 3, filed objection dated 21.02.2012 purporting to be under Order 3 Rule 4 C.P.C. read with Section 49-C of Advocates Act and Rule 39 of Indian Bar Council Rules, 1975 stating that his fees etc. have not been fully paid by petitioner and, therefore, in absence of any consent given by him, he is entitled to continue to represent petitioner, subject to a direction given to petitioner that he (petitioner) should pay outstanding dues (fees etc.) and application seeking permission to be represented through another counsel should be rejected.

5. It is interesting to mention that in para 3 of the said objection filed by respondent no. 3 he clearly stated that it was agreed between the claimant-petitioner and the counsel Sri J.P. Singh that expenses of claim petition shall be borne by Advocate himself and whatever shall be the amount of decree, 15% thereof shall be paid to counsel, i.e., respondent no. 3.

6. It is really surprising that this objection was considered by court below presided by respondent no. 2 and vide impugned order dated 21.03.2012 he has held that without consent of earlier counsel no other counsel can be engaged and petitioner can be paid amount, deposited by Insurance Company, pursuant to this Court's order, only when he is identified by his earlier counsel.

7. This Court issued notices to respondents no. 1 to 3. The respondent no. 3 admitted to have filed objection on petitioner's application dated 06.01.2012 but in para 6 states that the affidavit was filed without any mala fide intention and thereafter he has tendered apology for doing such misconduct.

8. The respondent no. 2 has filed his own personal affidavit before this Court and referring to the decision of Himachal Pradesh High Court reported in Oriental Insurance Company Vs. Smt. Sheela Devi and Smt. Durga Devi and Ors., AIR 2006 HP 94 it is said that as per the prevalent practice in the claims Tribunals, the petitioner-claimant was directed for proper identification by counsel who conducted the claim petition. He, however, placed on record an order dated 01.05.2012 stating that earlier counsel expressed his no objection and since the petitioner was identified by his new counsel, an order for payment was passed on that day. Admittedly, this order has been passed when notice was issued by this Court on 24.04.2012 whereby the respondent no. 3 was directed to appear before this Court personally on 26.04.2012 and thereafter when respondent no. 3 appeared, notice was issued to respondents no. 1 and 2 also on 27.04.2012 making certain observations.

9. The respondents no. 2 and 3 in view of the fact that now the payment has been made to claimant-petitioner, contended that this writ petition has rendered infructuous and should be dismissed accordingly.

10. However, I find it difficult to subscribe this view.

11. Petitioner's application seeking change of his counsel referring to an unprofessional conduct on the part of earlier counsel was rejected by respondent no. 3 on the ground that without consent of earlier counsel, change of counsel is not permissible. Of late similar matters are regularly coming to this Court. The respondent no. 2 has boldly supported his stand referring to a decision of Himachal Pradesh High Court and, therefore, it has become incumbent upon this Court to look into this aspect of the matter and find out, whether the order impugned in this writ petition can be sustained in law.

12. Before coming to other aspects of the matter, it would be necessary to find out whether respondent no. 3 has shown any unprofessional conduct while accepting brief of petitioner for filing motor accident claim before Tribunal.

13. It is admitted between the parties that respondent no. 3 agreed to bear all the expenses of litigation himself, and, in case of success, to share compensation awarded on an agreed percentage, i.e., 15%. Would this conduct of respondent no. 3 come within the ambit of "professional misconduct" or a conduct unbecoming of an Advocate.

14. Here is a case which requires this Court to remind members of the Bar that professional services rendered by the Lawyers are/were always looked with great honour and respect. The reward to the Lawyer(s) never treated to be the salary, fees or compensation for discharge of legal functions or assistance but actually in the nature of gratitude in recognition to the honorary service rendered by him. It may be that change in time has compelled drastic changes in the conduct, practice and status of lawyers and their requirements but still the basic concept has to sustain otherwise the consequences would be very serious. Still the Lawyers are considered to be an Officer of the Court. Therefore the basic and fundamental traditions have to be maintained so as to maintain confidence reposed by Society and public at large in the Courts of law.

15. The practice of asking counsel's fee based on shared basis depending on the extent of success in the case has consistently been deprecated and contemned by Apex Court. Moreover an act of an Advocate against his client on the ground that his fee etc. has not been cleared, has also been held to be reprehensible and condemnable to the extent it intend to create an obstruction in the matter in which the counsel engaged is made such complaint against his client. It is a different thing if the counsel or an Advocate brings an action in law claiming his charges, if any, accordance with law but he cannot exercise any power of veto so as to create obstruction to his client in that very case in which he is engaged. The practice of charging fee on percentage basis was deprecated as long back as in 1954 by the Apex Court and this has been reiterated subsequently time and again.

16. The record and pleadings of parties show that respondent no. 3 was claiming fees in terms of proportionate compensation. Such a practice and attitude on the part of an Advocate has been seriously condemned by Apex Court in the matter of "G" a Senior Advocate of the Supreme Court, AIR 1954 SC 557 where the Court said that it was highly reprehensible for an advocate to stipulate for or receive a remuneration proportionate to the result of litigation or a claim whether in the form of a share in the subject-matter, a percentage or otherwise.

17. Even otherwise, whenever a counsel comes to the court with a complaint that litigant has not paid his fees, the court cannot become a remedial institution to such a counsel by treating a litigation between to parties as a mode to ensure payment of fee to the counsel.

18. The Apex Court has castigated the dispute of fees to be entertained by a Court while hearing a case unless the counsel himself brings an action against the litigant for payment of fess. In this context, The Apex Court has also stressed upon unimpeded right of litigant to take action for disposal of his matter in a Court of Law instead of watching the interest of legal professionals.

19. In R.D. Saxena Vs. Balaram Prasad Sharma AIR 2000 SC 2912, the Apex Court has said:

". . .the cause in a court/tribunal is far more important for all concerned than the right of the legal practitioner for his remuneration in respect of the services rendered for espousing the cause on behalf of the litigant. If a need arises for the litigant to change his counsel pendente lite, that which is more important should have its even course flowed unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such course and the cause pending judicial disposal would be badly impaired. . . . For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative."

20. Further in para 17 the Court said:

". . .if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premises that fees is yet to be paid."

21. The Apex Court's observation in R.D. Saxena (supra) are very apt to this kind of situation where it is said:

"A Litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason."

22. It has also observed that the professional misconduct under Section 35 of Advocates Act, 1961 is not defined but in terms of what was said by Darling J. in In Re: A Solicitor ex parte the Law Society (1912) 1 KB 302, "If it is shown that an Advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his profession brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct."

23. The Court also referred to the meaning of "professional misconduct" assigned by Corpus Juris Secundum, Vol. 7 at page 740 which reads as under:

"Profession misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the Court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it."

24. Hon'ble R.P. Sethi, J. concurring with the judgment delivered by K.T. Thomas J. in R.D. Saxena (supra) referred to the Bar Council of India Rules that an Advocate shall, at all times, compose himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his non professional capacity

may still be improper for an advocate.

25. The law of law having been laid down almost more than half century ago operating as a binding precedent across the country. It cannot be assumed that respondent no. 2 was ignorant of such law and in any case the practice of charging fee on percentage basis having been seriously deprecated by Apex Court, the respondent no. 2 in permitting and encouraging this practice by compelling a litigant to seek consent of such an Advocate before changing his counsel is nothing but a blatant and flagrant disobedience of the mandate of binding precedent of Apex Court but also amounts to a deliberate and intentional encouragement of a professional misconduct on the part of an Advocate becoming party to the cause himself. Change of counsel on the part of a litigant has been held to be a right of litigant particularly when a litigant has shown unprofessional conduct on the part of his counsel.

26. It cannot be doubted that an advocate who departs from the high standards which the profession has set for itself and conducts in a manner which is not fair, reasonable and according to law, is liable to disciplinary action.

27. Despite repeated query, respondents no. 2 and 3 could not show as to how the objection filed by respondent no. 3 in present case before respondent no. 2 opposing petitioner's application for change of counsel was referable to either Section 49-C of Advocates Act or Rule 39 of Rules, 1975 or Order 3 Rule 4 C.P.C. Even the judgment of Hon'ble Himachal Pradesh High Court in Oriental Insurance Company (supra) is not attracted at all to the facts and circumstances of this case.

28. The conduct of respondent no. 2 in this case has not been befitting to a Presiding Officer of a Court. No plausible and valid justification has been shown by respondent no. 2 in passing the order impugned in this writ petition. It has also not shown any reason as to what special interest respondent no. 2 had in ensuring payment of fee to the respondent no. 3 from petitioner. Apparently whatever is apparent is not the entire thing and there are reasons to justify an inference of lack of bona fide on the part of respondent no. 2. The matter requires more investigation and inquiry. If a judicial officer has acted in a manner which is not fair and partial and apparently for the reasons lacking bona fide, such an action of a

judicial officer comes within the ambit of misconduct justifying an appropriate disciplinary action and adequate punishment.

29. I find myself duty bound to observe that whenever this Court finds in a case Judicial Officer of subordinate Court has not performed his duties honestly and faithfully, an action should be taken on administrative side so as to examine entire aspect in depth. A Judicial Officer, who has even a minutest attribute of lack of integrity etc., should be flushed out from the system to make it pure. The people have very high regard and deep confidence in the system of justice. This Court enjoy its strength upon people's confidence. An onerous burden lie on this Court to maintain purity in the system so that this faith of the people should continue otherwise it will erode the very system gradually but persistently.

30. In the matter of lack of integrity etc., we are duty bound to observe zero tolerance policy without comparing with other wings of State where standards, scales and testing standards are different. Other wings may afford to have a little dilution in their approach but whenever it comes to test standards of judiciary, we have to abide a policy of no dilution, no compromise and no tolerance. The degree of tolerance cannot be measured or controlled, therefore, to have uniformity, it should be a policy of zero tolerance. Whenever the Court finds from record want of due integrity or fairness or impartiality etc. on the part of a judicial official, in discharge of judicial function, the normal procedure should be that the matter should be referred on administrative side for further action and on administrative side, the Court must proceed to find out truth after holding such enquiry, as provided in law, and thereafter would be free to take appropriate decision. But despite judicial finding/observations, it would not be in the interest of system, if no action is taken whatsoever. Not only it will give a wrong message to all but would set a bad precedent. It is in these circumstances following well established practice and procedure in this matter, I direct Registrar General to get the record placed before the Court on administrative side for further action against respondent no. 2.

31. In the result, the writ petition is allowed. The impugned order dated 21.03.2012 is hereby quashed.

32. Since this litigation has been forced upon petitioner on account of patently illegal, unauthorized and unwarranted act on the part of respondents no. 2 and 3, in my view, the petitioner is entitled for exemplary costs, which I quantify to Rs. 40,000/-, to be borne equally by respondents no. 2 and 3. They shall pay the amount of costs within two months from the date of service of copy of this judgment upon them, failing which on an application made by petitioner before Tribunal, it shall issue a certificate to this effect, whereupon the amount of costs shall be realized as arrears of land revenue and shall be paid to the petitioner.

33. Registrar General is directed to place a copy of this order before Hon'ble the Chief Justice for His Lordship's kind perusal and appropriate action against respondent no. 2, as the case may be. Further, a copy of this judgment shall be furnished to Bar Council of Uttar Pradesh for appropriate action with regard to conduct of respondent no. 3.

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