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Court : Allahabad

Decided On : Dec-17-2008

Reported in : 2009(85)AWC1925

Judge : Sunil Ambwani, J.

Appellant : Smt. Urmila Devi and ors.

Respondent : Motor Vehicle Claim Tribunal/Viiiith Additional District Judge and ors.

Advocate for Def. : Shri. Atul Mehra

Advocate for Pet/Ap. : Shri. A.S. Diwakar

Disposition : Petition allowed

Judgement :

Sunil Ambwani, J.

1. Heard Shri A.S. Diwakar, learned Counsel for the petitioners.
2. This writ petition seeks to set aside an order dated 9.9.1988, passed by VIIIth Additional District and Sessions Judge, Varanasi rejecting the application to set

aside the compromise dated 12.12.1987 filed in Motor Claim Petition No. 40/1986 in the lok adalat on the ground that petitioner's counsel Shri Radhey Mohan Srivastava was competent to sign the compromise and that the provisions of Order XXIII, Rule 1 of Code of Civil Procedure are not strictly applicable to the proceedings of Motor Vehicles Act.

3. The counsel appearing for respondent Nos. 2 and 5 died during the pendency of the writ petition. Shri Atul Mehra appearing for respondent No. 3 has not cared to appear on any of the dates fixed in the matter. Now the office reports that steps have been taken and that the notices were again sent but the unserved notice or acknowledgment has not returned back. No one appears for the respondents and thus the matter was heard ex parte.

4. The petitioner's husband died on 25.1.1986 in a road accident. She alongwith her two minor children filed a claim petition for an award of Rs. 12 lacs on the ground that her husband was 34 years' old and was engaged in the business of kharadi when he died. He was a skilled employee holding diploma in Refrigeration and Air-Conditioning. He was also a diploma holder from Board of Technical Education, U.P. in Mechanical Engineering and was carrying on his skilled profession at a large scale. He had a monthly income of Rs. 1,500 per month.

5. The petitioner had engaged Shri Radhey Mohan Srivastava as her counsel on 12.12.1987. She received a notice from the police station for appearing in the matter on 13.12.1987, which was a Sunday. On the next date she was informed that the lok adalat was held on the previous day, i.e., on the Sunday on 12.12.1987. She claims that her counsel, without ensuring her presence and her consent, had entered into a compromise in the lok adalat with the insurance company for a lump sum payment of only Rs. 45,000.

6. The application was dismissed by the Motor Accident Claims Tribunal on the ground that in *Gaya Prasad Singh v. Sheomurat Singh* 1981 ACJ 328, it was held that a compromise reduced in writing and signed by the advocates of the parties is a valid compromise and a decree can be passed on its basis and that it was not necessary that it was to be signed by the parties alone. It was further found that the provisions of Order XXIII, Rule 1, C.P.C. are not applicable to the proceedings

in the Motor Vehicles Act. Rule 21 of the Motor Vehicles Act does not make the provisions of Order XXIII, Rule 1 of the C.P.C. applicable to the proceedings.

7. Order XXIII, Rule 3 of the Civil Procedure Code was amended by Act No. 104 of 1976. By the amendment the words 'in writing and signed by the parties' were added after the words 'lawful agreement or compromise'. The amendment was made in terms of the amendments made by the Allahabad High Court published in U.P. Gazettee dated 31.8.1974. The object of the amendment was to avoid any dispute with regard to the validity of the agreement or compromise. By the same amendment a proviso was also added giving powers to the Court to decide the question, if it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at but no adjournment was to be granted for the purposes of deciding the question unless the Court for the reasons to be recorded thinks fit to grant such adjournment. The Explanation provided that the agreement or compromise which is void and voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of the rule.

8. In *Som Dev and Ors. v. Rati Ram and Anr.* : AIR 2006 SC3297 , the Supreme Court held in para 8 as follows:

8. After the amendment of the Code of Civil Procedure by Act No. 104 of 1976, a compromise of a suit can be effected and the imprimatur of the Court obtained thereon leading to a decree, only if the agreement or compromise presented in Court is in writing and signed by the parties and also by their counsel as per practice. In a case where one party sets up a compromise and the other denies it, the Court can decide the question whether, as a matter of fact, there has been a compromise. But, when a compromise is to be recorded and a decree is to be passed, Rule 3 of Order XXIII of the Code insists that the terms to the compromise should be reduced to writing and signed by the parties. Therefore, after 1.2.1977, a compromise decree can be passed only on compliance with the requirements of Rule 3 of Order XXIII of the Code and unless a decree is passed in terms thereof, it may not be possible to recognize the same as a compromise decree. In the , case on hand, a decree was passed on 10.10.1980 after the amendment of the Code and it was not in terms of Order XXIII, Rule 3 of the Code. On the other

hand, as the decree itself indicates, it was one on admission of a pre-existing arrangement.

9. In *Zahoor Bux and Anr. v. Fareed Bux and Ors.* (2005) 13 SCC 383, the Supreme Court held that where objections are filed to the compromise on the ground that the same was not genuine inasmuch as it did not bear the signature of the affected party. In that event the Court, which recorded the compromise is required to hold an enquiry with regard to genuineness or otherwise of the compromise after giving opportunity to the parties to lead oral and documentary evidence on the said question.

10. In the present case, the settlement was arrived at in lok adalat held on 12.12.1987, after the enforcement of the Legal Services Authorities Act, 1987. Although the Act received the assent of the President on 11.10.1987, the provisions of the Act were enforced except Chapter III from 9.11.1995 under Section 1 (3) of the Act. The compromise could not be treated as a decree under Section 21(1) of the Act. It had to be accepted by the Court.

11. I find that after the amendment of Order XXIII, Rule 3 of the Code of Civil Procedure, 1908 by Act No. 104 of 1976 the Court was under duty to verify whether the compromise was in writing and was signed by the parties. In the present case, it is admitted that the compromise was not signed by the parties. It was only signed by the counsel of the parties. The compromise as such could not be accepted by the Court even if it was entered into in the proceedings in lok adalat. Further the petitioner had clearly alleged that she was not present at the time when the lok adalat took up the matter. It is surprising to find as to how the officer presiding the lok adalat could have accepted the settlement which was not even suggested to the petitioner as a claimant. The authority of the counsel to enter into the compromise is circumscribed and has been restricted by the amendment to the Civil Procedure Code by Act No. 104 of 1976. The parties must sign the written agreement or compromise which has to be verified by their counsels for the purposes of identification of the parties. It should thereafter undergo to the scrutiny of the Court to find out whether it is a lawful agreement and is reduced in writing and is signed by the parties. In the present case, the

compromise was not a valid compromise as it was not signed by the petitioner. The compromise could not be acted upon and approved by the Court.

12. The writ petition is allowed. The order dated 9.9.1988 is set aside. The Motor Accident Claims Tribunal is directed to decide the matter afresh on merit after taking evidence. The petitioner will be permitted to withdraw Rs. 45,000, which appears to be in the deposit and has not been withdrawn by her. The Motor Accident Claims Tribunal will release the amount after seeking necessary sanction within 30 days on the service of the order in its Court and decide the matter very expeditiously and if possible within six months.

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