

Rajan Vs. Sukumaran

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Court : Kerala

Decided On : Mar-14-1997

Reported in : 1997ACJ778

Judge : V.V. Kamat and; K.A. Mohamed Shafi, JJ.

Appeal No. : M.F.A. No. 225 of 1989

Appellant : Rajan

Respondent : Sukumaran

Advocate for Def. : T.K.M. Unnithan, Adv.

Advocate for Pet/Ap. : Pirappancode V.S. Sudheer, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Mohamed Shafi, J.

1. The award dated 24.7.1987 and the order dated 25.2.1988 in LA. No. 592 of 1987 in O.P. (MV) No. 516 of 1982 passed by the Motor Accidents Claims Tribunal, Trivandrum are challenged by the claimant in this appeal. The claimant-appellant claimed a total compensation of Rs. 1,25,000/- for the personal injuries sustained by him alleging that while he was riding his bicycle from west to east

through the Trivandrum-Kattakada road on 9.3.1981 the taxi bearing No. KLV 2991 owned by the respondent No. 1 and driven by the respondent No. 3 in a rash and negligent manner from the opposite direction hit against his bicycle, knocked him down and caused serious injuries.

2. The Tribunal after enquiry, by the award dated 24.7.1987 allowed a compensation of Rs. 81,800/- with interest at 9 per cent per annum from 29.7.1982 against the respondent Nos. 1 and 3 and directed the respondent No. 2 insurer to pay the amount within two months from the date of award and allowed interest at 12 per cent per annum beyond the period of two months, disallowing the contention raised by the respondent No. 2 with regard to limitation of its liability.

3. Subsequently, the respondent No. 2 insurance company filed I.A. No. 592 of 1987 before the Tribunal seeking review of the award dated 24.7.1987, limiting its liability to the statutory limit of Rs. 50,000. Though the claimant appellant herein had raised various contentions against the review of the award, the learned Tribunal repelling those contentions reviewed the award limiting the liability of the insurer to Rs. 50,000/- and directing the appellant to realise the balance amount from the owner and driver of the offending car.

4. The claimant has come up in appeal dissatisfied with the quantum of compensation and review of the original award by the Tribunal.

5. Even though several contentions are raised by the appellant against the inadequacy of the quantum of compensation in the memorandum of appeal, when the appeal came up for hearing the counsel for the appellant has not addressed any argument against the inadequacy of the quantum of compensation awarded by the Tribunal.

6. On a careful consideration of the nature of injuries sustained by the appellant and the quantum of compensation awarded by the Tribunal, we feel that the quantum of compensation awarded by the Tribunal is fair and adequate and no interference regarding the quantum of compensation is warranted in this appeal.

7. The main thrust of the contention of the appellant is against the order passed by the Tribunal reviewing the award and limiting the liability of the respondent No. 2 insurance company to Rs. 50,000/-. Over and above raising various contentions against the competency of the Motor Accidents Claims Tribunal to review its own order and the legality and jurisdiction of the impugned order, the counsel for the appellant strenuously submitted that in case the liability of the insurer is limited and the appellant is directed to proceed against respondent Nos. 1 and 3, the owner and driver of the vehicle for realisation of the balance amount exceeding Rs. 50,000, the appellant will not be able to realise the amount from the owner and the driver and the award passed by the Tribunal in favour of the appellant to that extent will be of no benefit.

8. The counsel for the appellant vehemently argued that the Motor Accidents Claims Tribunal not being a civil court, has no power or authority to review its own order. According to him, as per Rule 21 of the Kerala Motor Accidents Claims Tribunal Rules, 1977 (for short 'M.A.C.T. Rules') only certain provisions of the Civil Procedure Code are made applicable to the proceedings before the Tribunal and the power to review the order under Civil Procedure Code is not mentioned in that rule and therefore, the Motor Accidents Claims Tribunal has no power to review its own order. He also argued that since the Motor Accidents Claims Tribunal has no inherent power to review its own order unless and until the power of review is conferred upon the Tribunal either expressly or impliedly, the Tribunal has no jurisdiction to review its order.

9. Even though Rule 21 of the M.A.C.T. Rules which enumerates the provisions of the Civil Procedure Code made applicable to the proceedings before the Claims Tribunal, it does not include the power of review as provided in the Civil Procedure Code. Considering the fact that the Claims Tribunal is having all the attributes and trappings of a civil court, it has to be held that the Tribunal has the power to review its own order especially to achieve the object and purposes for which the Claims Tribunal is established, in spite of the fact that the power of review under the Civil Procedure Code is not specifically made applicable under Rule 21 of the M.A.C.T. Rules.

10. If, in fact the liability of the insurance company is limited under the provisions of the Motor Vehicles Act and the Tribunal has passed an award overlooking the mandatory provisions of the Act and against the terms of the policy with regard to limitation of the liability, in appropriate cases, the Tribunal has the power to review its own order by limiting the extent of liability of the insurer in accordance with the express provision of the Motor Vehicles Act, as otherwise the insurance company which is an instrumentality of the Government dealing with public money will be put to irreparable loss and injury and manifest injustice will be resulted if the original order is allowed to stand.

11. The counsel for the appellant argued that if at all the Tribunal can correct accidental mistakes or errors apparent on the face of the record in the award by resorting to review the Tribunal cannot rewrite or change the basis of its judgment or shift the liability after fastening the same either on the owner or the insurance company with regard to the payment of compensation in the guise of review of the order. In support of his argument, counsel for the appellant made reliance upon the judgment in *National Insurance Co. v. Jumrati* 1993 ACJ 961 (Allahabad), wherein a single Judge of Allahabad High Court has observed as follows:

Having all the attributes and trappings of a civil court it is possible to say that Accidents Claims Tribunal in order to achieve the object for which it is set up will be deemed to have a power to review its own orders if such orders are found to contain errors which are fundamental and destructive of the provisions of the Motor Vehicles Act. It can correct accidental errors in its judgment with regard to calculation of the amount and with regard to any mistake in the multiplier, if the same is not consistent with its judgment. However, it cannot rewrite a judgment after it has fastened the liability either on the owner or the insurance company with regard to the payment of compensation. It cannot change basis of the judgment but it can make a judgment effective by correcting fundamental errors which are apparent on the face of the record for which it has not to travel beyond the record. If for correction of its errors some additional material is required in order to enable it to rewrite its judgment, it will not be permissible for the Tribunal to do that while exercising the powers of review. The power given to review a judgment is a very limited power. It does not extend to sitting in appeal on its own judgment by the

Accidents Claims Tribunal nor it permits to rewrite a judgment on the basis of fresh material which was not before the Tribunal when it decided the matter. The Tribunal having the trappings and attributes of a civil court will definitely be entitled to exercise the power of review within the limit of principles which are laid down in the aforesaid authorities. Therefore, the objection of the learned Counsel for the appellant that Accidents Claims Tribunal has no power to review its own judgment on any ground whatsoever does not appear to be correct. The objection is accordingly overruled in the light of the discussions made herein above.

Relying upon the above observations made by the single Judge the counsel for the appellant vehemently argued that since the Claims Tribunal has found that the respondent No. 2 insurer is liable to pay the entire compensation awarded in this case, in the award passed, it has no jurisdiction to review that finding and say that the liability of the insurer is limited to Rs. 50,000/- in this case. With respect we are unable to endorse the view expressed by the learned single Judge of the Allahabad High Court in the above observations limiting the power of review of the Tribunal to a very narrow compass. If it is found that the order passed by the Tribunal is illegal being in violation of the express provisions of the Motor Vehicles Act or contrary to the stipulations made in the insurance policy, the hands of the Tribunal are not tied to rectify the illegality crept in the award by inadvertence or otherwise to meet the ends of justice in appropriate cases and to do away with the manifest injustice that will be resulted, if the award is allowed to stand in its original condition.

12. Even though Order 47, Rule 1 of the Civil Procedure Code regarding the right of review of its own order is not mentioned in Rule 21 of the M.A.C.T. Rules, it has been held by this Court in various decisions that the provisions of the Civil Procedure Code should be followed by the Motor Accidents Claims Tribunal and other Tribunals unless those provisions are specifically excluded by the statute. The decisions in *K.V. Aboo v. Commissioner for Workmen's Compensation* 1977 ACJ 446 (Kerala), *Cheru Ouseph v. Kunjipat-humma* 1981 KLT 495, *Mohammed v. Chakkappan* 1983 KLT 845, *Abdulla v. Rent Controller* 1984 KLT 865 and *United-India Insurance Co. Ltd. v. George* 1988 ACJ 45 (Kerala), have laid down the above principle of law. Therefore, in view of what is stated in the preceding

paras and the decisions referred to above, it is clear that the Motor Accidents Claims Tribunal has got jurisdiction to review its own order and the contention raised by the appellant to the effect that the Tribunal has no power to review its own order has to be rejected.

13. Order 41, Rule 33 of the Civil Procedure Code empowers the appellate court to pass any decree and make any order which ought to have been passed by the trial court or to pass such further or other decree or order as the case may be required in appropriate cases. In this case by preferring this appeal the appellant has brought the entire matter before this Court and this appellate court has got jurisdiction to pass any appropriate order to avoid injustice or rectify any manifest error in order to meet the ends of justice.

14. The counsel for the appellant submitted that the respondent No. 2 has not raised any specific plea in the written statement filed by it to the effect that its liability is limited to Rs. 50,000/- and therefore, they are not entitled to raise such a contention after the award is passed by the Tribunal holding that they are liable to pay the entire amount of compensation, by seeking a review of the award.

15. In para 3 of the written statement filed by the respondent No. 2 insurance company it is stated that the owner of the vehicle has not furnished any information regarding the details of insurance in spite of demand and they could not give any details of policy from their records and, therefore, the insurance on the vehicle is not admitted. In para 9 it is further stated that the vehicle mentioned in that petition is a taxi car and in case the Tribunal finds that there is valid policy, the liability of the respondent No. 2 may be limited to the statutory liability of Rs. 50,000/-. It is true that by contending that the particulars of the insurance policy were not available with the respondent No. 2 at the time of filing the written statement, the respondent No. 2 has raised such vague contentions in the written statement regarding the liability and the limit of their liability. But it cannot be said on a careful perusal of the written statement filed by the respondent No. 2 in this case that the respondent No. 2 has not at all pleaded with regard to the limitation of its liability in the written statement. It is true that the respondent No. 2, insurance company, ought to have been more diligent in prosecuting the case and they

should have raised specific contention with regard to the limitation of their liability in the written statement instead of putting forward such vague contentions about the limit of liability. At any rate the contention with regard to the limitation of liability of the respondent No. 2 can be clearly spelt out from its pleadings in the written statement. Therefore, the contention of the appellant that since there was no specific plea with regard to the limitation of liability made in the written statement, the respondent No. 2 cannot raise such a contention regarding limitation of its liability, is not sustainable.

16. The counsel for the appellant submitted that the respondent No. 2 has not produced the policy along with the written statement nor made any attempt to mark the policy before the Tribunal to substantiate the contention that its liability is limited. Therefore, according to him, the copy of the policy produced by the respondent No. 2 along with the review petition after the disposal of the claim petition without making any attempt to prove the same and to get it marked under due process of law, cannot be looked into for any purposes in this case. In support of his contention the counsel for the appellant relies upon the decision of a Division Bench of this Court in *Vijayalakshmi v. Rajasekharan Nair* 1995 ACJ 405 (Kerala), to which one of us, Kamat, J. was a party. In that case, the question that came up for consideration before the Division Bench was whether the insurance policy produced by the insurance company along with the memo after the evidence of PW 1 was recorded, without examining any officer of the insurance company and without making any attempt to get the insurance policy marked, can be relied upon by the Tribunal. In that factual background the Division Bench held that as the policy was not produced before the Tribunal along with the written statement, the insurance company ought to have produced it before the Tribunal only with a petition with notice to the other side and since no attempt was made to get the policy marked before the Tribunal, the Tribunal should not have relied on the alleged copy of the policy which was not admitted in evidence.

17. In this case, the factual situation is entirely different. It is true that the respondent No. 2, insurance company, had not produced the insurance policy along with its written statement or before the award was passed by the Tribunal in this case. But after the award was passed the respondent No.. 2 produced the

copy of the policy along with LA. No. 592 of 1987 on 13.8.1987 accompanied by an affidavit sworn by the Divisional Manager of the insurance company and a letter dated 9.6.1987 sent by the Divisional Manager to the counsel for the insurance company appearing before the Tribunal. It is seen from LA. No. 592 of 1987 filed by the respondent No. 2 before the Tribunal that the LA. is filed along with the copy of the policy after giving notice to the counsel for the appellant herein. It is also seen from the proceedings of the Tribunal that the appellant-claimant, respondents and the owner and driver of the vehicle were represented by separate counsel before the Tribunal and the counsel for the appellant herein had filed a detailed counter statement in that LA. opposing the same. It is further seen that the Tribunal after hearing all concerned, passed a detailed order in the LA. by affording adequate opportunity to all interested parties to be heard. Therefore, the law laid down by the Division Bench of this Court in the decision in *Vijayalakshmi v. Rajasekharan Nair* 1995 ACJ 405 (Kerala), relied upon by the counsel for the appellant has no application while considering the factual matrix in this case.

18. Though it is stated in the order passed by the Tribunal in LA. No. 592 of 1987 that copy of the policy produced by the insurance company is marked as Exh. B1, it is seen from the award passed by the Tribunal, much prior to the order in the LA. was passed, that Exh. B1 marked therein is a copy of the judgment of the Judicial II Class Magistrate, Kattakada. Therefore, it is clear that the Tribunal without taking pains to verify its records proceeded with the wrong assumption that the copy of the policy produced along with the LA. has been marked as Exh. B1 in this case. But that mistake committed by the Tribunal need not detain us any further in this case. As already noted copy of the policy is produced by the respondent No. 2 along with the petition supported by an affidavit filed by the Divisional Manager of the company. The letter written by the Divisional Manager to the counsel is also produced along with the copy of the policy stating that in the absence of any particulars furnished by the insured with regard to the policy, subject to the insured fulfilling his obligation under the policy, the extent of liability of the insurance company is Rs. 50,000/-.

19. The copy of the policy produced by the insurance company is not disputed or challenged by the insured, the owner of the vehicle. The appellant-claimant raised

various contentions against the genuineness and admissibility of the copy of the policy and the right of the Tribunal to review its order etc. The Tribunal proceeded with the wrong assumption that the policy is marked as Exh. B1 in the case. The appellant-claimant has no legal right to deny the genuineness of the policy, so long as the insured who possessed the original policy has not chosen to raise any contention against the genuineness and legality of the policy, the contention raised by the appellant who is an utter stranger to that document has to be rejected on that ground alone.

20. We carefully perused the policy produced by the respondent No. 2 as well as the affidavit filed in support of the petition and the letter produced along with the LA. We find nothing to suspect the genuineness of the copy of the policy produced by the respondent No. 2 in this case.

21. The counsel for the appellant vehemently argued that the respondent No. 2 has not produced the original policy or taken any steps to call upon the insured, the owner of the vehicle to produce the original policy so as to receive the copy of the policy produced along with the petition as secondary evidence. In support of his contention the counsel for the appellant made reliance upon the observations made by a Division Bench of the Punjab and Haryana High Court in *Oriental Fire & Genl. Ins. Co. Ltd. v. Chandrawali* 1989 ACJ 419 (P&H;) and the decision of the single Judge of the Patna High Court in *New India Assurance Co. Ltd. v. Gulam Rasool* 1993 ACJ 1132 (Patna). Though in those reported rulings it has been held that the copy of the policy produced by the insurance company without calling upon the insured to produce the original policy and legally proving the copy of the policy as genuine is not admissible in evidence. In view of the judgment of the Apex Court in *National Insurance Co. Ltd. v. Jugal Kishore* 1988 ACJ 270 (SC), those decisions cannot be accepted and approved by us as good law. In para 9 of the judgment the Supreme Court observed as follows:

This court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of

instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the insurance company concerned wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing of a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

22. From the above observations of the Supreme Court it is clear that it is the duty of the insurance company to produce a copy of the insurance policy to substantiate the contention with regard to the limit of their liability. Therefore, the principles regarding production and admission of documents as contemplated under Order 11, Rules 12 and 14 and Order 12, Rule 2 of the Civil Procedure Code and production of secondary evidence under Sections 64 and 65 of the Evidence Act have no application. Therefore, the appellant cannot contend that the copy of the policy produced by the insurance company in this case cannot be accepted in evidence since the procedure laid down under the law for producing secondary evidence is not complied with by the insurance company.

23. The further question to be considered is whether the copy of the policy produced by the insurance company in this case can be accepted in evidence and acted upon.

24. The counsel for the appellant submitted that the copy of the insurance policy produced in this case is not certified by any principal officer of the insurance company as provided under Section 2(5) of the Insurance Act and therefore, it is not admissible in evidence. In support of his contention the counsel relied upon the decision in *National Insurance Co. Ltd. v. Vasanthara Amma* 1992 ACJ 250 (Kerala), wherein a Division Bench of this Court has observed that:

If the insurance company was to produce a certified copy of the insurance policy as per the provisions of the Insurance Act, it must comply with the particular provision of the Act, viz., Section 2(5) of the Insurance Act. The copy of the insurance policy has to be certified by a principal officer. It has to be shown in the copy produced, otherwise the Tribunal cannot accept it.

25. The fact that the copy of the insurance policy produced by the insurance company should be attested by a principal officer of the insurance company as provided under Section 2(5) of the Insurance Act so as to make it admissible in evidence is well settled. The counsel for the appellant vehemently argued that the copy of the policy produced in this case is not attested or certified by a principal officer of the insurance company as provided under Section 2(5) of Insurance Act and therefore, it is not admissible in evidence.

26. A careful perusal of the copy of insurance policy produced in this case shows that the policy has been attested by the principal officer as required under law. There is a signature therein acknowledging receipt of the original of that document by the insured after examining and finding it to be correct. As already noted in the affidavit filed in support of the petition in LA. No. 592 of 1987 for production of the copy of insurance policy before the Tribunal, the Divisional Manager of the insurance company at Trivandrum has stated that he is producing the copy of the policy and the letter from the insurance company signed by him showing the statutory limit of the vehicle to Rs. 50,000/-.

27. As already noted, the appellant- claimant in the O.P. though raised several contentions against the production of the document and acceptance of the same in evidence, the owner of the vehicle who was in possession of the original policy though represented by the counsel before the Tribunal, did not raise any contention against the genuineness and admissibility of the copy of insurance policy produced by the insurance company. Therefore, from the peculiar nature and circumstances of the case it is clear that the insured who was entitled to raise objection with regard to the genuineness, validity of production and admissibility of the copy of insurance policy in evidence before the Tribunal deliberately refrained from challenging it. But the appellant-claimant who is an utter stranger to that

document raised various contentions against the production and admissibility of the copy of the policy in evidence. Under such circumstances it cannot be contended that the copy of the policy produced by the insurance company cannot be received and admitted in evidence, on the basis of the contention raised by the third party to the transaction, when the document purports to be the copy of the original supplied to the insured bearing his acknowledgement for receipt of the original and especially when he did not produce the original or raise any contention against the genuineness and admissibility of the copy in evidence. Therefore, the contention raised by the appellant in this regard is also not sustainable.

28. The counsel for the appellant argued that mere production of a document without examining any competent person to prove the contents thereof is not sufficient to prove its contents and therefore, the copy of the insurance policy produced in this case does not establish that the liability of the insurance company is limited to Rs. 50,000/- as contended by the respondent No. 2.

29. Section 95 (2) (b) (i) of the Motor Vehicles Act, 1939, which was in force on the date of accident stipulates that the maximum liability of the insurer to a third party is Rs. 50,000/-. It is specifically stated in the copy of the policy produced in this case that the liability of the insurer is limited to what is provided under the Motor Vehicles Act, 1939 and it is only an Act policy. Therefore, once the policy produced is accepted as being genuine and admissible in evidence and it is found that it is only an Act policy limiting the liability of the insurer as provided under Section 95 (2) (b) (i) of the Motor Vehicles Act, the liability of the insurance company has to be limited as provided under the Act. For that purpose, there is no necessity to examine anybody from the insurance company and in fact, the examination of a witness to depose that it is only an Act policy limiting the liability of the insurance company to what is provided under Section 95 (2) (b) (i) of the Act will be unnecessary, wasting time and energy of the court. This contention of the appellant is also not sustainable.

30. From the proceedings before the Tribunal and the impugned order passed by the Tribunal in the LA. it is clear that the learned Tribunal proceeded as if the copy

of the policy produced was marked as Exh. B1 in the proceedings, and passed orders accepting the same, though in fact, some other document was already marked as Exh. B1 in the O.P. Therefore, even though due to the carelessness of the Tribunal the copy of the policy was not in fact marked as an exhibit, the Tribunal proceeded on the assumption that it was marked as Exh. B1 in the case. It is clear from the impugned order passed by the Tribunal that after considering all the contentions raised by the appellant the impugned order is passed. In view of the fact that the copy of the policy is not actually marked as an exhibit, we mark the same as Exh. B2.

31. It is true that the facts and circumstances of the case reveal that the respondent No. 2, insurance company, was not diligent and careful in prosecuting the case before the Tribunal till the award was passed. The contention of the insurer is that there is practical difficulty in tracing out the policy when the number of the policy or other necessary and relevant particulars are not furnished, since the insurance company is transacting business through various branches all over the country. But that fact does not absolve or minimise the responsibility of the insurance company which is an organ of the Government from discharging its duties fairly and properly. Noticing such lapses on the part of the insurance company the Apex Court had to lament upon them in the decision in *National Insurance Co. Ltd. v. Jugal Kishore* 1988 ACJ 270 (SC), referred to by us in the preceding para of this judgment. But considering the fact that the insurance company which is an instrumentality of the Government dealing with public money should not be held liable to bear unnecessary burden by shelling out huge public funds due to the laches or inadvertence on the part of its officers charged with the conduct of the cases before the Tribunal or other fora. It is up to the persons in the helm of affairs of the insurance company and other public institutions to take very serious view of such matters and to deal with such erring officers' with a firm and heavy hand.

32. On a careful and anxious consideration of the entire facts and circumstances and the evidence on record it is clear that the liability of the respondent No. 2, insurance company, is limited to Rs. 50,000/- as provided under Section 95 (2) (b) (i) of the Motor Vehicles Act as it then stood. It is also clear from the copy of the

insurance policy produced in this case that it is only an Act policy and the premium paid is only to cover the liability under the Act. Hence the direction in the original award passed by the Tribunal against the respondent No. 2, insurance company, to pay the entire amount awarded is illegal being contrary to the provisions of law. Therefore, the Tribunal is perfectly justified in accepting the copy of the policy produced along with LA. No. 592 of 1987 with notice to the appellant and others, giving sufficient opportunity to put forward their contentions in the LA. in evidence and reviewing the award relying upon the policy of insurance and limiting the liability of the insurer to Rs. 50,000/- as provided under the law, and the above appeal preferred by the appellant-claimant against the order passed by the Tribunal is of no merits.

In view of what is stated in the preceding paras, we confirm the order passed by the Tribunal and dismiss the appeal.

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