

Ratna Ram Vs. Union of India (Uoi)

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Court : Rajasthan

Decided On : Jan-27-1983

Reported in : 1(1984)ACC368

Judge : Dwarka Prasad, J.

Appellant : Ratna Ram

Respondent : Union of India (Uoi)

Judgement :

Dwarka Prasad, J.

1. This appeal arises a short question as to whether a counter claim can be allowed in a claim petition filed under Section 110-A of the Motor Vehicles Act, particularly in the circumstances of the present case.

2. The undisputed facts of the case are that a collision took place on January 7, 1977 between a Jeep belonging to the Government of India and the truck belonging to the appellant on the main highway between Barmer and Balotra. The persons, who were travelling in the jeep, were injured in the accident and they filed a claim petition before the Motor Accidents Claims Tribunal, Jodhpur (hereinafter referred to as 'the Tribunal'), which was allowed by Tribunal and compensation was awarded to the injured persons by Tribunal in respect of which a separate appeal has been preferred by the appellant, which is pending in this Court.

3. The Union of India filed a separate claim petition on August 22, 1977 before the Tribunal and claimed compensation for the damage caused to the jeep, as a result of the accident. The appellant filed his written-statement on January 10, 1978. No claim in respect of any damage to the truck of the appellant was made when the original written-statement was filed by the appellant on January 10, 1978. The Union of India amended the claim petition on March 13, 1979. The appellant filed an amended written statement on March 11, 1980 almost after one year of the filing of the amended claim petition and the amended written-statement of the appellant claimed a sum of Rs. 34,040/- by way of compensation for the damage caused to his truck, on account of the accident. As the original claim petition filed by the Union of India was brought after the statutory period of six months, the Tribunal dismissed the aforesaid claim petition filed by the Union of India on the ground that it was barred by time.

4. The counter-claim filed by the appellant was also dismissed by the Tribunal on the ground that the counter-claim was filed after the lapse of the statutory period after the date of the accident and no reason was assigned as to why the counter-claim was not filed alongwith the original written-statement and further on the ground that the

counter-claim could not be filed in a claim petition filed under the provisions of the Motor Vehicles Act, 1939 (hereinafter called 'the Act'), before the Tribunal. The Tribunal also came to the conclusion that the appellant had failed to prove satisfactory evidence that any loss was caused to him on account of the alleged damage to the truck.

5. In this appeal, learned Counsel for the appellant argued in the first place that a counter-claim could be filed in a claim petition before the Tribunal and the Tribunal was not justified in refusing to entertain the counter-claim filed by appellant on this ground. It cannot be disputed that the provision of Order 8 Rule 6-A C.P.C. are not specifically applicable to claim petitions filed before the Tribunal in cases arising out of motor accidents. Section 110-A of the Act provides a speedy remedy for enforcing the liability in the case of a motor accident, by means of an application made under Sub-section (1) of that section, before the Claims Tribunal, having jurisdiction over the area in which the accident had occurred. Sub-section 2 of Section 110-A provides that such a claim petition shall be made in the prescribed form and shall contain prescribed particulars; while Sub-section 3 of Section 110-A prescribes a special period limitation for filing a claim petition and it has been provided that an application for compensation under Section 110-A shall be entertained unless the same is made within six months of the occurrence of the accident of course, the Tribunal is empowered to entertain a claim petition beyond the aforesaid period of six months, provided it is satisfied that the applicant was prevented from making an application within the specific time, on account of sufficient cause. Section 111-A authorises the State Government to make rules for the purpose of carrying into effect the provisions of Section 110 to 110-E, particularly inter alia in respect of the form of application for claim of compensation and the particulars to be contained therein and the procedure to be followed by the Claims Tribunal in holding the enquiry in respect of such claim petitions. The State Government has made rules in pursuance of the powers vested in it by provisions of Section 111-A, and they are called the Rajasthan Motor Accidents Claims Tribunal Rules, 1964 (hereinafter called 'the Rules'). Rule 3 provides that every application for payment of compensation shall be made in the form prescribed under the Rules. Rule ' 7 of the Rules provides as under :

7. Appearance and examination of parties :

(1) The owner of the motor vehicle and the insurer may, and if so required by the Claims Tribunal shall at or before the first hearing or within such further time as the Claims Tribunal may allow, file a written-statement dealing with the claim raised in the application, and any such written-statement shall form part of the record.

(2) If the owner or insurer contests the claim, the Claims Tribunal may and if no written-statement has been filed, it shall proceed to examine the owner and the insurer upon the claim and shall reduce the substance of the examination to writing.

I may here also refer to rule 20, which runs as under :

20--Code of Civil Procedure to apply in certain cases. The following provisions of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall so far as may be, apply to proceedings before the Claims Tribunals, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII; and Order XVIII, Rules 1 to 3.

6. The form of application for claim of compensation, arising out of a motor accident, is appended to the Rules and Rule 3 requires all applications to be filed in the prescribed form, giving particulars specified therein. A perusal of Rule 20 will lead to the conclusion that there is no doubt that the provisions of Order 7 and Order 8 of the Civil Procedure Code and more particularly the provisions of Order 8 Rules 6-A C.P.C. have not been specifically made applicable to claim proceedings.

7. The argument of the learned Counsel for the appellant is that several other provisions of the Code of Civil Procedure have not been specifically made applicable to claim proceedings by Rule 20 or similar provisions contained in the Rules of other States, but they have been applied in the motor accident claim case. Learned Counsel referred to the decision of their Lordships of the Supreme Court in *State of Haryana v. Darshana Devi* 1979 ACJ. page 205 wherein the Provisions of Order 33 Rule 9A of the Code of Civil Procedure have been held to apply to the Tribunals, which have trapping of civil courts. But their Lordships of the Supreme Court have themselves observed, in the aforesaid decision, that access to justice by indigent persons is an integral part of the concept of social justice and the basis principles contained in Article 14 and 39A of the Constitution; and the law enacted for the benefit of the poor cannot be justified by non-application thereof to the indigent persons, who must be given benefit doubt against levy of price to enter the temple of justice.

8. A reference was also made by the learned Counsel for the appellant to the decision of their Lordships of the Himachal Pradesh High Court in *National Carriers v. Mrs. M.J. Stone* 1980 ACJ page 93. wherein the question of the applicability of Rule 7 of Order 32 C.P.C. to the proceedings in a claim petition came up for consideration. In that case, it was held that although Order 32 Rule 7 C.P.C. may not be specifically applicable to claim proceedings, yet the principles embodied in the aforesaid provision would apply to the claim proceedings. The following observations of the learned Chief Justice, occurring in the aforesaid decision may be reproduced :

In our opinion, however, this would not mean that the principles embodied in Order 32 Rule 7 CPC would not apply to the claim proceedings under Motor Vehicles Act. The rule embodied in Order 32, Rule 7 C.P.C. is based on sound equitable principles which require that whenever the interest of a minor is involved in any judicial proceedings, the Presiding authority, who is expected to settle the dispute, should stand in a quasitutory position with regard to the concerned minor and see that minor's interest is not jeopardised. This would be so even if the minor is represented in the proceeding by a natural guardian, because it sometimes happens that even the natural guardians are not very much alive to the interest of the minors at the time of arriving at a settlement.

So far as the Claims Tribunal is concerned, we find that this duty to safeguard the interest of the minors is greater in view of the specific provisions contained in Section 110-B of the Motor Vehicles Act which says that the Claims Tribunal should make an award determining the amount of compensation which appears to it 'to be just. Thus, the Motor Vehicles Act itself casts a duty on the Tribunal to give only that award which is just. This statutory duty of the Tribunal to look to the justness of the award would obviously be greater in cases where the interest of a minor is involved. Under the circumstances, we agree with the learned Single Judge that even though the provisions contained in Order 32 Rule 7 are not specifically applicable to the facts of the case, the principles contained in that rule would be applicable on the principle of equity, justice and good conscience.

Thus, it clearly emerges from the aforesaid decision that the applicability of the principles embodied in Order 32 Rule 7 C.P.C. to the claim petitions was upheld on the ground that such provisions were based on sound principles of equity, justice and good conscience. So far as the provisions of Order 8 Rule 6 A C.P.C. are concerned, I am unable to hold that they are based upon an equitable principles as may be applicable to the claim petitions. The claim petition can be filed by a person who has sustained injury or has sustained the loss of property as a motor accident by way of a speedier remedy in place of the normal and usual remedy of a civil suit and no principle of equity, justice or good conscience is involved for allowing his adversary to file a counter-claim, although there is no express provision permitting the filing of such a counter claim either in Section 110-A of the Motor Vehicles Act or Rule 20. Nor any such provision is contained in Rule 7 which allows the owner of the vehicle, which has caused the accident, and the insurer an opportunity to file a written-statement. Thus in my considered view, the provisions of Order 8 Rule 6-A C.P.C. cannot be pressed into service for filing a counter-claim in claim proceedings under Section 110A of the Act so as to allow the owner of the vehicle which caused the accident or the insurer thereof, an additional opportunity of presenting his claim in the garb of a counter-claim.

9. Even assuming for the sake of argument, that a counter-claim could have been entertained in a claim petition, even then I am in agreement with the learned Tribunal that the counter-claim filed in present case is not maintainable on the ground the appellant failed to file the counter-claim when he filed the original written-statement on January 10, 1978. It may also be pointed out that Section 3(2)(b) of the Limitation Act provides that any claim by way of counter-claim shall be treated as a separate suit and shall be deemed to have been instituted, in the case of a counter-claim on the date on which the counter-claim is made in the court. In the present case, the counter-claim was made on March 11, 1980 after the expiry of more than three years of the date on which the accident took place while no claim or counter-claim could have been entertained after the expiry of the period of six months. Even if the appellant would have desired to file a regular suit in a civil court for the recovery of the amount of damages caused to his truck as a result of the accident, then the remedy by way of a suit would have been barred by time after the expiry of 3 years from the date of the accident. Thus, no counter claim could have been entertained after the expiry of the statutory period of limitation for filing a claim petition or even a suit for the same relief.

10. Learned Counsel for the appellant justified the filing of the counterclaim after the lapse of such a long time on the basis of the provisions contained in Order 8 Rule 6-A C.P.C. and submitted that a counter-claim could be filed within such period in which the written-statement or amended written-statement could be filed. Rule 6-A of Order 8 C.P.C. runs as under :

6-A (1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter claim against the claim of the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not:

Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter claim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counter claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the court.

(4) The counter claim shall be treated as a plaint and governed by the rules applicable to plaints.

According to the aforesaid provisions, a counter claim can be filed either before or after the filing of the suit, but before the defendant has delivered his defence or before the time limited for the delivery of his defence has expired. As already observed above the appellant filed his written-statement on January 10, 1978 and the opportunity to the defendant to deliver a counter-claim came to an end with the expiry of the time fixed for the delivery of his defence.

11. Merely because the claimant amended the claim petition in some minor respect, a fresh cause of action did not accrue to the appellant to enable him to file a counter claim along with amended written-statement. If such a view can be taken, and the defendant is allowed to bring forth all stale claims, just on a mere presence of a minor or nominal amendment being made in the claim. It is not the case of the appellant that the counter claim was sought to be advanced because of the averments recently introduced by the claimant in the claim petition by way of amendment thereof. If the appellant had a cause of action for filing the counter-claim when a notice of the original claim petition was received by him but he failed to avail of such opportunity, then the appellant cannot be allowed to file a counter-claim now with the amended written statement on the ground that he failed to file a counter-claim along with his original written statement.

11. Moreover, in this case the original claim petition itself was barred by time as it was filed beyond the period of six months of the date on which the accident took place and the Tribunal dismissed the claim petition solely on the ground that it was barred by time. As such a counter-claim cannot be entertained in such a case, where there was no validly presented claim petition. Learned Counsel for the appellant relied upon the decision of their Lordships of the Calcutta High Court in Daga films v. Lotus Production. : AIR1977Cal312 . Where in it was held that even if the suit of the plaintiff was discontinued or dismissed, the counter-claim could nevertheless be proceeded with. The reason is obvious, as Sub-rule (4) of Rule 6-A of Order 1 of Civil Procedure Code itself provides that the counter-claim shall be treated as a plaint and shall be governed by rules applicable to the plaints. Thus, if a valid counter claim is filed, it has to be treated as plaint and the rules applicable to plaints shall equally be applicable to such a counter claim. It was, therefore rightly observed by their Lordships of the Calcutta High Court in the aforesaid case that even if the plaintiff's claim is not pressed, given up or withdrawn or breaks down defendant will have right to obtain a decree on the basis of his counter-claim. In that case, the plaintiff did not press his claim and it was in such circumstances that the learned Judge observed that the counterclaim could still be tried and a decree could be passed on that basis. In the present case, I do not propose to decide finally the question that if a suit is dismissed on the ground of limitation, a counter-claim arising out of such a suit, can or cannot be entertained and I leave this question open for latter decision in an appropriate case. In the present case, the counter claim was rightly rejected on the

ground that such a counter-claim could not be entertained with respect to a claim petition filed in a motor accident claim case.

12. As a result of the aforesaid discussion, the appeal has no force and the same is dismissed, but without any order as to costs.

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