

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment delivered on: 31.08.2017

+

CM(M) 244/2017 & CM No.8119/2017

NOORDEEN

..... Petitioner

Through: Mr. R.K. Kohli, Advocate.

Versus

MANJU CHAHAR & ORS.

..... Respondents

Through: Mr. Pankaj Kumar Deval, Advocate
for Respondent No. 1 with
Respondent No.1 in person.
Mr. S.P. Jain, Amicus Curiae

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. In execution of a Motor Accident Claim Award, the appellant stood surety for the Judgment Debtor (JD) regarding payment of compensation to respondent No.1. The JD defaulted in paying the compensation amount and hence warrants of attachment dated 20.12.2016, apropos the surety's property, were issued by the Executing Court in Execution Petition No 47/15. This warrant has been impugned by the appellant on the ground that the Tribunal did not have the jurisdiction to issue orders apropos execution of the same through the Executing Court, instead if at all required, the warrant ought to have been issued through District Judge, Alwar, Rajasthan

where the property is situate. He relies upon Rules 31 and 32 of the Delhi Motor Accident Claims Tribunal Rules, 2008, which read as under:-

"31. Enforcement of award of the Claims Tribunal.-
Subject to the provisions of section 174 of the Act, the Claims Tribunal shall, for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908(5 of 1908), as if the award where a decree for the payment of money passed by such court in a civil suit.

32. Vesting of powers of Civil Court in the Claims Tribunal.-*Without prejudice to the provisions of section 169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908(5 of 1908)."*

2. The learned counsel also relies upon provisions of Sections 39 and 38 of the Code of Civil Procedure ('the Code'), which read as under:-

"39. Transfer of decree.-

(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Transfer of decree to Court in another State.-

Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State.”

A bare perusal of the aforesaid provisions shows that the Award can be executed as specified therein. The learned counsel for the appellant argues that Section 39 sub-Section (4) of the Code provides a specific bar on a Court of execution on passing a decree against a person's property outside the local limits of its jurisdiction. In the same vein, he contends that the decree has to be served to the other State for execution under Section 40 of the Code. He submits that in the absence of any rules for imprisonment for a defaulter in the State of Rajasthan, the appellant cannot be imprisoned.

3. Mr. Pankaj Kumar Deval, the learned counsel for respondent No.1/beneficiary of the Award submits that the surety has no locus because the Award is not against him and at best, if anybody could have any grievance, it would be the JD and the petitioner is not a party to the case.

4. Mr. Jain, the learned Amicus Curiae states that the nature of the proceedings before the Motor Accident Claims Tribunal are different than those in a normal civil suit; in ***Rajasthan State Road Transport Corporation, Jaipur vs. Smt. Poonam Pahwa and others 1997 ACJ 1049***

the Supreme Court has held that the proceedings before the Motor Accident Claims Tribunal are neither civil nor criminal in nature but of a special variety where the objective is to provide expeditious relief to persons claiming compensation in motor accidents. He submits that, therefore, the empowerment through the aforesaid provisions i.e. Rules 31 and 32 of the Delhi MACT Rules, 2008 and Sections 39 and 40 of the Code are only facilitative and not necessarily restrictive of the powers of the Tribunal. This was also reaffirmed by the Karnataka High Court in ***Karson Kyamaji Patel vs. Motor Accidents Claims Tribunal and Ors. 1986 ACJ 110.***

5. In the case of ***Rajasthan State Road Transport Corporation, Jaipur*** (supra) the Supreme Court held as under:-

"32. It appears to us that the provisions of Order XXI Rule 1 are not in any way inconsistent with the provisions for awarding just and fair compensation in Motor Accident Claims. The real purpose of awarding just and fair compensation to the victim of the accident or the legal heirs of such victim will be fulfilled by applying the principle of Order XXI Rule 1 Civil Procedure Code so that the awarded is not deprived of the opportunity of gainfully utilising the amount under the award for want of notice about the deposit made by judgment debtor resulting in the sum remaining unutilised. In our view, therefore, there is no difficulty to apply the underlying principles under Order XXI, Rule 1 Civil Procedure Code in executing the award of compensation passed by the Motor Accidents Claims Tribunal and the Tribunal must be held to be competent to invoke the beneficial provisions of Order XXI Rule 1 Civil Procedure Code."

7. In the full bench decision of the Madhya Pradesh High Court in ***Smt. Sarmaniya Bai and Ors. vs. Madhya Pradesh Rajya Parivahan Nigam and Ors. AIR 1990 MP 306*** while dealing with the issue of whether tribunals

have jurisdiction to enforce their awards adopting procedure provided under C.P.C., it was held that Tribunals were not debarred from exercising their inherent jurisdiction to enforce their awards in an area outside their territorial limits through any Civil Court. The Court observed *inter alia*:

"Our conclusion, therefore, is that the law expounded by the learned single Judge of this Court in his order passed on 31-3-1989 in disposing of Civil Revision No. 134 of 1987, preferred by the appellants is incorrect. Law was not correctly stated in taking the view that the Claims Tribunal cannot execute its own award in any other manner except in accordance with the provisions of Section 110-E of the Act. On the contrary, we are of the view that the Claims Tribunal possesses inherent jurisdiction to enforce its own award in accordance also with the provisions of CPC as applicable to execution of orders and decrees passed by a Civil Court. Accordingly, we answer the question in the affirmative."

8. Evidently *Sarmaniya Bai & Ors* (supra) dealt with a case covered under Section 110-E of the Motor Vehicles Act, 1939. The said provision is in *pari materia* with Section 174 of the Motor Vehicles Act, 1988, which reads as under:

"174. Recovery of money from insurer as arrears of land revenue

Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as the arrear of land revenue.

9. In the proceedings for enforcement of the Award, on 17.08.2016, following statement of the appellant was recorded before the Court:-

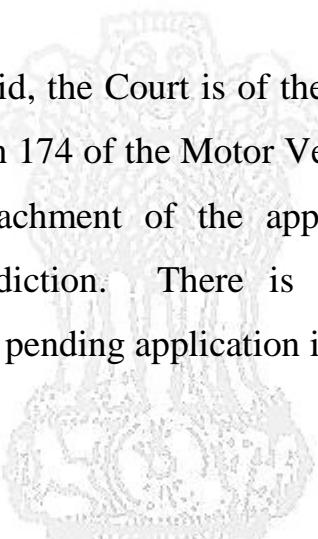
“I am the cousin of JD Umar Mohammad. I hereby undertake to pay the entire balance decretal amount in case of default on the part of JD in making the payment or in appearing before the Court. I hereby deposit the property documents of my shop Ward no. 17, Tijara Tehsil, Tijara, Distt. Alwar, Rajasthan admeasuring 200 sq. ft. I request this Court to release the JD Umar Mohammad. I will make the payment as per the schedule given in the application moved on behalf of JD. The application is Ex.CI. I understand the legal consequences of giving undertaking to the Court. For this undertaking I can be sent to jail also.”

10. The appellant had given an undertaking to the Court seeking release of the JD who would otherwise have continued to languish in judicial custody apropos non-payment of the compensation amount. In other words, appellant stepped into the shoes of the JD and provided the substratum and assurance to the Court for payment of the awarded amount on behalf of the appellant. Insofar as the payment has not been received the same was to be recovered from the appellant by attachment and auction of his property through the SDM, Tijara, Rajasthan. As has been held in **Sarmaniya Bai & Ors (supra)**, the Tribunal possess inherent jurisdiction to enforce its own Award in addition to the provisions and procedure as detailed out in CPC for execution of orders and decree passed by a Civil Court.

11. The objective of proceedings before the Tribunal is expeditious provision of succour to the unfortunate parties affected by a motor accident. In the proceeding for recovery of the compensation amounts, the appellant had himself given a surety to the Court and now he seeks to avoid and resile from it by saying that the recovery certificate towards recovery of land arrears should have been done through the District Judge, Alwar,

Rajasthan i.e. under the provisions of the CPC. The Court is of the view that the CPC procedure is neither required in the present case nor is that course mandatory, as has been held in *Smt. Sarmaniya Bai & Ors. (supra)* because the Tribunal has inherent powers for enforcement of its Award and speedy payment of compensation award. The provisions of the Rule 31 and 32 of the Delhi Motor Accident Claims Tribunal Rules, 2008 and Section 38 & 39 of the CPC, relied upon by the appellant, are only facilitative and cannot be seen as restrictive upon the inherent powers of the Motor Accidents Claims Tribunal.

12. In view of the aforesaid, the Court is of the opinion that the Tribunal has the powers under Section 174 of the Motor Vehicles Act, 1988, to direct issuance of warrant of attachment of the appellant's property situated beyond its territorial jurisdiction. There is no merit in the appeal, accordingly, it alongwith the pending application is dismissed.



NAJMI WAZIRI, J.

AUGUST 31, 2017
sb

