

A STATE OF TRIPURA AND ORS.

v

BINA CHOUDHARY AND ORS.

MAY 22, 2007

B [DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

C *Indian Forest (Tripura Second Amendment) Act, 1986—s.52A—Forest offence—Vehicle carrying illegal timber seized—Compounding of offence—Vehicle directed to be released on deposit of Rs.10,000, being valuation of the vehicle and Rs.2,000/- as compensation—Deposit made—Meanwhile, gear box of the vehicle stolen from Forest Range Office, hence, vehicle could not be returned to the owner—Owner filed money suit claiming compensation for loss of income out of the vehicle—Trial Court decreed suit; owner directed to be paid Rs. 2.03 lakhs with interest for specified period and thereafter*
D *Rs.252/- per day till the vehicle was returned—Order upheld by High Court—On appeal, held: Trial Court made assessment of loss of income without any evidence—No document submitted to prove income out of the vehicle—Judgment of Courts below therefore unsustainable—Considering the long passage of time and the limited nature of controversy, instead of remitting back the matter to Trial Court for re-hearing, owner directed to be paid*
E *Rs.35,000/- in full and final settlement of the claim.*

A truck carrying illegal timber was seized by the Forest Range Staff. Show cause notice was issued to the owner of the truck for confiscation under s.52 (A) of the Indian Forest (Tripura Second Amendment) Act, 1986. The owner pleaded guilty and prayed for compounding of the offence. In response, the Chief Conservator of Forest directed the case to be compounded on deposit of Rs.10,000/- being valuation of the truck and Rs. 2,000/- as compensation. Deposit was accordingly made. Meanwhile, gear box of the truck was stolen from the office compound of the Forest Range Office. Because of the theft, the truck could not be returned to the owner, who filed money suit claiming compensation for loss of income from the said truck. Trial Court decreed the suit for a sum of Rs. 2,03,364/- with 12% interest p.a. w.e.f. 18.10.1993 to 31.12.1995 and thereafter Rs.252/- per day till the truck was returned. High Court upheld the judgment of Trial Court. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. There was no specific issue framed regarding the income of the vehicle(truck). The trial court itself noticed that the plaintiff-owner had made an exorbitant claim and that his claim that the vehicle operated daily was absurd. All the estimates made by the trial court were without any evidence. No evidence was led on the questions of loss of income. Further, the original claim was Rs.1,68,000/- which was subsequently amended to Rs.15,54,000/-. No averments were made about the income or about the loss in the plaint. The judgment and decree of the trial court and the impugned order of the High Court have no legal basis. The evidence of the plaintiff No.1 is on record. In fact PW-2, the son of PW-1 clearly stated that they have not submitted any document to prove the income of the vehicle.

[Para 19] [756-G; 757-A, B]

2. The conclusions of the High Court are abrupt. The High Court appears to be unmindful of the fact that it was deciding an appeal in a money suit. [Para 18] [756-E]

3. In normal course, this Court would have set aside the impugned order and directed the Trial Court to re-hear and decide the matter afresh. Considering the long passage of time and the limited nature of controversy, in full and final settlement of the claim, the plaintiff is directed to be paid Rs.35,000/- by the defendant within two months. [Para 20] [757-B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2362 of 2005.

From the Final Judgment and Order dated 19.12.2002 of the High Court of Gauhati in First Appeal no. 113 of 1997.

Gopal Singh, Rituraj Biswas and Anukul Raj for the Appellants.

Shibashish Misra, Ajay Yadav and K.V. Mohan for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by a Division Bench of the Gauhati High Court, Agartala Bench. The High Court dismissed the First Appeal filed by the appellants upholding the judgment and decree passed by the trial court. By the said judgment the trial court decreed the suit for a sum of Rs.2,03,364/- with 12% interest per annum with effect from 18.10.1993 to 31.12.1995 and thereafter Rs.252/- per day till the vehicle was returned.

A 2. Background facts are very interesting and essentially as follows:

B 3. A vehicle bearing registration No. TRL 2443 carrying illegal timber was seized by the Champaknagar Range Staff. An offence report No. 3/CB-93 dated 11.06.1993 was drawn by the Forest Beat Office, Champabari Beat Office of Champaknagar Forest Range against the owner of said vehicle for illegally carrying, illicitly collected 57 nos. of unmarked gamer sawn timber. The driver of the said vehicle could not produce the registration papers of the vehicle as required under the Forest Rules for carrying forest produce and also failed to produce any documents like G.P. and Transit Pass of Forest Department. The driver of the vehicle Kartik Chandra Ghosh was arrested and the vehicle was seized and subsequently brought to Champaknagar range under Taliamura Police Station and kept in the custody of the in- Charge, Divisional Forest Protection Party, Taliamura.

D 4. On 21.6.1993 a show cause notice was issued to the owner of the vehicle as to why the said vehicle shall not be confiscated under Section 52(A) of the Indian Forest (Tripura Second Amendment) Act, 1986 (in short the 'Tripura Act').

5. On 26.6.1993 the owner of the truck pleaded guilty and prayed for compounding of the offence in response to the show cause notice.

E 6. On 13.8.1993 the Chief Conservator of Forest, Tripura, directed the case to be compounded on realization of Rs.25,000/- being valuation of the truck and Rs.5,000/- as compensation.

F 7. On 27.9.1993 the vehicle was directed to be released on receipt of the payment. On that date owner of the vehicle had prayed for re-assessment and reduction in the value of the vehicle as the vehicle was old. In consideration of the submission made, the Chief Conservator of Forest, Tripura by its order dated 27.9.1993 revising his previous order and re-assessing the valuation of the truck to be Rs.10,000/- and the compensation to be Rs.2,000/- fixed the amounts accordingly. It was directed that a written undertaking was to be given by the owner of the truck that he shall ensure that in future the vehicle would not be used for commission of any forest offence. Time for making payment was granted till 30.10.1993. In the night of 12/13.10.1993 the gear box of the vehicle was stolen by some unknown miscreants from the office compound of the Range Office.

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8. On 18.10.1993 the deposit was made in respect of the value and the compensation. A

9. On 14.10.1993 a First Information Report (in short the 'FIR') was lodged to record the theft of the gear box of the vehicle. The matter was also taken up with the forest officer for apprehending of the culprits and recovery of the gear box. Because of the aforesaid circumstances, the vehicle could not be returned. Owner of the vehicle- Sudhir Bhusan Choudhary issued a legal notice on 12.1.1994. Subsequently a Money Suit was filed in May, 1994 (MS/27 of 1994) in the Court of Assistant District Judge No. 1, West Tripura, Agartala praying for a compensation of Rs.1,68,000/- alongwith interest at the rate of 18% per annum from 10.1.1994 till payment. In the written statement the demand was disputed and it was submitted that the claim is without any basis. B C

10. On 22.7.1996 the trial court decreed the suit for a sum of Rs.2,03,364/- for the period from 18.10.1993 to 31.12.1995 and thereafter at the rate of Rs.252/- per day. The defendants were also directed to return the vehicle to the plaintiff within two months from the date of delivery of the judgment. D

11. An appeal was preferred before the High Court. During the pendency of the appeal, the vehicle was handed over after repairing the vehicle and making it in running condition. E

12. As noted above the High Court dismissed the appeal. During the pendency of the appeal the original owner Sudhir Bhusan Choudhary expired and his legal heirs were brought on record.

13. The stand of the appellants is that the plaintiff himself while seeking release of the vehicle indicated that the value of the vehicle was very less and was even less than Rs.25,000/- as was originally fixed. Considering the age of the vehicle the valuation was quoted Rs.10,000/-. It is inconceivable that such a vehicle would fetch income of Rs.600/- per day as was originally claimed. Claim was for Rs.15,54,000/-. No evidence of any income was adduced except an assertion that the owner was earning Rs.2,000/- per day. The trial court found that no evidence was led, yet held that the income would be roughly Rs.600/- per day. The trial court itself noticed that the plaintiff had claimed an exorbitant amount for compensation as well as for interest. The vehicle was of the year, 1979. The trial court itself noticed that it was inconceivable that vehicle of the value of Rs.10,000/- would fetch F G H

A Rs.7,200/- per month as claimed by the appellant.

14. Thereafter on entirely conjectures and surmises the High Court held income of a new truck would be Rs.2,000/- per day and if the vehicle was to be sold by making a deduction of Rs.100/- per month, the vehicle was earning around Rs.600/- per day.

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15. Trial court then proceeded to examine the expenditure on hypothesis and without any evidence being led. It was clearly stated by the trial court that no evidence was led by the plaintiff to substantiate the claim of loss of income. The High Court did not examine any of these relevant factors and abruptly came to the conclusion that it would be very difficult to assess the actual value or earning of an old vehicle. It clearly overlooked the fact that there was no evidence led by the plaintiff to substantiate the claim of income. It was not for the trial court to go on a proving enquiry and fix figures that too without any basis.

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16. In essence, it was submitted that the judgment and decree of the trial court as upheld by the High Court cannot be sustained.

17. In response, learned counsel for the respondent submitted that though it is a fact that no concrete evidence was led yet, the High Court acted in a judicious and equitable manner to fix the income.

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18. The conclusions of the High Court are abrupt. The High Court appears to be unmindful of the fact that it was deciding an appeal in a money suit. Only conclusion worth noticing reads as follows:

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“We find no illegality committed by the learned trial court in making the assessment of loss of income at Rs.252/- per day. It is correct that in such a nature of case, the accurate assessment to ascertain the actual net income of an old vehicle like one in hand would be very much difficult. The learned trial court applied a rough assessment on approximate calculation and as such we are of the considered opinion that it is not a fit case to interfere in this appeal.”

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19. There was no specific issue framed regarding the income of the vehicle. The trial court itself noticed that the plaintiff had made an exorbitant claim and that the claim of the plaintiff, that the vehicle operated daily was an absurd claim. All the estimates made by the trial court were without any evidence. No evidence was led on the questions of loss of income. It is

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further relevant to note that the original claim was Rs.1,68,000/- which was subsequently amended to Rs.15,54,000/-. No averments were made about the income or about the loss in the plaint. The judgment and decree of the trial court and the impugned order of the High Court have no legal basis. The evidence of the plaintiff No.1 is on record. In fact PW-2, the son of PW-1 clearly stated that they have not submitted any document to prove the income of the vehicle.

20. In normal course, we would have set aside the impugned order and directed the trial court to re-hear and decide the matter afresh. Considering the long passage of time and the limited nature of controversy, we direct that in full and final settlement of the claim, the plaintiff shall be paid Rs.35,000/- by the defendant within two months from today. Ordered accordingly.

21. Appeal is allowed to the aforesaid extent without any orders as to costs.

B.B.B.

Appeal allowed.