

GAHC010014132016



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : FAO/15/2016

SRI NARENDRA NATH SARMA
S/O LATE MAHAT CHANDRA SARMA, WARD NO. 3, NEAR WORKSHOP,
ABHAYAPURI, P.S. BONGAIGAON, DIST. BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS
REPRESENTED BY THE COMMISSIONER and SECY., HOME DEPTT.,
DISPUR, GUWAHATI-6, ASSAM.

2:THE DEPUTY COMMISSIONER

BONGAIGAON
P.O. and DIST. BONGAIGAON
ASSAM.

3:THE SUB-DIVISIONAL OFFICER CIVIL
NORTH SALMARA
ABHAYAPURI
P.O. ABHAYAPURI
DIST. BONGAIGAON
ASSAM.

4:THE DIST. TRANSPORT OFFICER

BONGAIGAON
P.O. and DIST. BONGAIGAON
ASSAM

Advocate for the Petitioner : MR.T SK

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 19-03-2024

JUDGMENT & ORDER

The instant appeal arises out of the judgment and decree passed by the learned Trial Court in Money Suit No.06/2009 whereby the suit filed by the plaintiff/appellant was dismissed on various grounds including the question of limitation. From the materials on record, more particularly, the plaint it reveals that the plaintiff was the owner of an Ambassador Car having registration No. ASL-8372. The said vehicle was requisitioned for law and order by the defendant No.2 on 05.10.2002. But the vehicle was used for counter insurgency purpose by the Army. The said vehicle thereupon was damaged by the Army and was subsequently kept in *Makali* garage at Abhyapuri in damaged condition. Under such circumstances, the plaintiff submitted a letter on 18.03.2003 to defendant No.3 to repair the damaged vehicle, but nothing was done. Pursuant thereto, the plaintiff filed a writ petition being WP(C)No.3490/2002 against the defendants and this Court vide order dated 29.05.2002 directed the defendant No.2 to release the vehicle of the petitioner within seven days from the date of the order and also directed to make an inventory and determine the compensation payable to the plaintiff to be released within three months from the date of release of the vehicle. It was also observed in the said order that if the plaintiff is aggrieved by the compensation, he may approach the defendant No.2. Pursuant to the order being passed, the plaintiff communicated the same

to the defendant No.2 and the defendant No.2, thereupon directed the MVI Bongaigaon to assess the repairing bill of the damaged vehicle.

2. The plaintiff, however, was not satisfied for which the plaintiff filed a contempt proceeding being Cont.(C) Case No.74/2003. In the said contempt proceeding, this Court vide order dated 19.12.2003 directed the plaintiff to submit the repairing bill to make the vehicle road worthy and on furnishing the same the defendant No.2 was directed to get the matter verified and pay the plaintiff such amount that would be required to make the vehicle road worthy. On the basis of the said order, the plaintiff submitted the bill to the defendant No.2 which was then forwarded for examination to the MVI and the Executive Engineer, PWD, Mechanical Division, Abhyapuri. Thereupon, a report was submitted by the Executive Engineer, PWD, Mechanical Division Abyapuri stating that an amount of Rs.32,000/- to Rs.35,000/- would be required for repairing of the damaged vehicle, to which however the plaintiff did not agree. However, the contempt case was disposed of with an advice to the plaintiff to seek the vehicle to be released and disposed of the contempt petition.

3. Thereupon, the plaintiff filed another writ petition being WP(C)No.7919/2004 and the said writ petition was disposed of by the order dated 03.01.2006 for payment of compensation and also to initiate a civil suit to claim the suit cost for complete damage of the vehicle. It was stated in the plaint that the defendant returned back the damaged vehicle on 17.01.2005 and paid the requisitioned bill till that period.

4. Be that as it may, it is very relevant at this stage to take note of that pursuant to the vehicle being returned on 17.01.2005, the writ petition being WP(C)No.7319/2004 was disposed of by an order dated 03.01.2006. Thereupon, another writ petition was filed by the plaintiff as the papers of the vehicle was not returned being WP(C)No.6368/2006. This Court vide order dated 23.03.2007, directed the defendant No.2 to take steps with regard to the non-release of the documents of the vehicle and on verification if it is found that the grievance of the petitioner is genuine to release the documents without further delay.

5. Subsequent thereto, the petitioner file another writ petition being WP(C)No.4658/2007 and this Court by the order dated 06.01.2009 directed the defendant No.4 to issue a duplicate registration certificate in the event the plaintiff makes an application for the purpose and subject to clearance of all required dues with a further observation that the plaintiff may approach the Civil Court having jurisdiction over the matter by claiming damages. Thereupon, the records reveal that the plaintiff issued a pleaders notice under Section 80 on 14.02.2009, claiming an amount of Rs.34,20,150/-. However, pursuant to the said pleader's notice, no payment having been made, the suit was filed on 14.09.2010.

6. Pursuant to the filing of the suit, the written statement was filed by the defendants raising various preliminary objections regarding maintainability of the suit and also on the merits that the plaintiff was not entitled to the compensation as claimed for. On the basis of the pleadings initially nine issues were framed. Thereupon, two other additional issues were framed. The issues

so framed are reproduced hereunder:

Issues

1. *Whether there is any cause of action for filling the instant suit?*
2. *Whether the suit is bad for non-joinder of necessary party?*
3. *Whether the suit is barred by the law of limitation?*
4. *Whether the plaintiff's vehicle No.ASL-8372 was requisitioned vide letter No.BNZ-14/2001 by the defendant?*
5. *Whether the vehicle was damaged during the period of requisition?*
6. *Whether the defendant has paid an amount of Rs.4,16,666/- to the plaintiff as compensation including the costs of repairing of the Ambassador car in reference and also for costs of spare parts of the vehicle?*
7. *Whether the plaintiff has sustained financial loss due to non-running of the vehicle?*
8. *Whether the plaintiff is entitled to compensation of Rs.34,20,150/- from the defendants?*
9. *To what relief/reliefs the plaintiff is entitled to law and equity?*

Additional Issues

1. *Whether the plaintiff is the registered owner of the Ambassador car No.ASL-8372 and whether he has locus standi to file the instant suit?*
2. *Whether the suit is barred by the principles of estoppel, waiver and acquiescence?*
7. Thereupon, both the sides adduced evidence. By the judgment and decree

dated 24.07.2015, the suit was dismissed. While dismissing the suit, the learned trial court decided the issues Nos.1, 2, 4 and 6 as well as the additional issue No.1 and additional issue No.2 in favour of the plaintiff, whereas, the other issues had been decided against the plaintiff.

8. Being aggrieved, the instant appeal has been filed. Although from a perusal of the nomenclature of the appeal, it reveals that the appeal was rightly filed under Section 96 read with Order XLI of the Code, but it was incorrectly registered as FAO No.15/2016 which ought to have been registered as a Regular First Appeal. This Court has also taken note of that the due court fee has also been paid.

9. In the backdrop of the above, this Court has heard Mr. I Alam, the learned counsel appearing on behalf of the appellant and Mr. D Nath, the learned Senior Government Advocate, Assam for the respondents. Upon hearing the said counsels, the following points for determination arises for consideration:

(i.) As to whether the learned Trial Court was justified in deciding the issue No.3 that the suit was barred by limitation?

(ii.) As to whether the plaintiff was entitled to any relief in the suit?.

10. This Court in the foregoing segments of the instant judgment has duly taken note of that the vehicle of the appellant was requisitioned on 05.01.2002 and admittedly a damaged vehicle was returned back to the plaintiff on 17.01.2005. In that respect, if this Court takes note of the compensation which has been sought for in the suit, it would be seen that an amount of

Rs.2,17,150/- has been sought for as regards expenses for the damaged vehicle; Rs.27,03,000/- has been sought for loss of business from the date of requisition of the vehicle till the vehicle was delivered; an amount of Rs.2,00,000/- was sought on account of physical agony and an amount of Rs.3,00,000/- was sought on account of mental agony.

11. This Court further finds it relevant to take note of that this Court vide order dated 03.01.2006 in WP(C)No.7319/2004 has duly mentioned that the petitioner would be entitled to initiate civil action for the claim of the damage of the vehicle. It is also relevant to mention here that the loss of Rs.27,03,000/- was as regards the loss of the business. A perusal of paragraph 11 of the plaint reveals that the claim of Rs.27,03,000/- was made for the period from the date of release of the vehicle in 2005, till the date of filing of the suit. It is also seen that in respect to the mental agony and physical agony, the claim of the plaintiff was that he suffered due to non-release of the vehicle, in question.

12. From a perusal of the materials on record, it reveals that the suit was filed in the year 2010 and the claims made in respect of the damage of the vehicle and for mental and physical agony was prior to the delivery of the vehicle in question which was on 17.01.2005. Therefore, the suit was barred by limitation in so far as those claims are concerned, even taking into account the order passed by this Court on 03.01.2006 in respect to WP(C)No.7319/2004.

13. The next question therefore arises as to whether the suit was barred in respect to the claim pertaining to the loss of business for the period from the

date of release of the vehicle till the date of filing of the suit which the plaintiff quantified @ Rs.27,03,300/-. From a perusal of the plaint, the claim so made does not appear to be barred by limitation. Therefore, in the opinion of this Court, the learned Trial Court erred in deciding the issue No.3 in holding that the claim for loss of business of Rs.27,03,300/- was barred by limitation. However, this Court makes it clear that the decision as regards the suit being barred by limitation in respect to the claim of Rs.2,17,150/- for the expenses of the damaged vehicle as well as Rs.5,00,000/- on account of physical and mental agony requires no interference.

14. The next point for determination, therefore, arises as to whether the plaintiff is entitled to any relief on account of his loss of business to the tune of Rs.27,03,000/-.

15. This Court has duly perused the evidence of the plaintiff and the plaintiff merely stated that he sustained average daily loss of business to the tune of Rs.1700/- which he calculated to be Rs.27,03,000/-. No evidence has been produced as to on what basis the plaintiff claims this amount. There is also nothing in the pleadings or in evidence of the plaintiff as regards mitigation of damages. Under such circumstances, it is the opinion of this Court that the issue No.7 had been rightly decided by the learned Trial Court, for which no interference is called for.

16. Consequently, in view of the above, this Court finds no merit in the instant appeal for which the appeal stands dismissed with a cost of Rs.5000/-.

17. The Registry shall remit the records to the learned Trial Court.

JUDGE

Comparing Assistant