
(1999) 06 OHC CK 0009

In the Orissa High Court

Case No : Miscellaneous Appeal No. 200 of 1996

Divisional Manager, United India Assurance Co. Ltd.

APPELLANT

Vs

Ullas Chandra Jena and Another

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Citation : (2001) ACJ 1120 : (1999) 2 OLR 129

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M. Sinha and S. Sen, for the Appellant; R.N. Mohanty, A. Dash, B.N. Rath and M.K. Panda (R-1), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The facts giving rise to the present appeal at the instance of the Insurer are as follows : Claimant-respondent No. 1 filed Claim Case No. 76 of 1987 claiming compensation on account of injuries sustained by him in an accident involving the truck bearing number ORP-82 belonging to present respondent No. 2. The Claims Tribunal by award dated 5.9.1990 decided that a sum of Rs. 1,45,000/- is to be paid as compensation by the Insurer. The relevant order passed by the Claims Tribunal is as follows :

"The Misc. Case is allowed in part on contest against O.P. No. 2 and without contest against O.P. No. 1 with cost of Rs. 500/- and it is ordered that the petitioner will be entitled to a consolidated compensation of Rs. 1,45,000/- from the O.P. No. 2-Insurance Company with interest " 6% per annum from the date of claim i.e. 10.2.1987 till realisation. The O.P. No. 2 is directed to pay the compensation amount to the petitioner with cost and interest within 2 months hence, excluding the period required for obtaining a certified copy of the award, failing which interest will run " 12% per annum from the date of claim till realisation...."

Against the aforesaid award, the present appellant had filed Misc. Appeal No. 59

of 1991 which was disposed of by this Court on 7.1.1992. While upholding the finding relating to negligence, this Court remanded the matter for fresh determination of the quantum of compensation payable. The Tribunal was directed "to make fresh enquiry for determination of just compensation after deposit of Rs. 5,000/- by the insurer within two months from today". Instead of paying the said amount within two months as directed, the present appellant filed SLP before the Supreme Court and it is stated at the Bar that SLP No. 9151 of 1992 was dismissed by order dated 15.7.1994. In the meantime, it appears that the Tribunal vide order dated 14.5.1992 had observed that the cost of Rs. 5,000/- having not been deposited, there was no scope to re-open the case and directed the Insurer to satisfy the previous award forthwith. Even after the dismissal of the S.L.P., there was no attempt by the Insurance Company to comply with the direction relating to payment of cost of Rs. 5,000/- and to seek for re-adjudication of the question relating to the quantum. However, the Insurer deposited the awarded amount. While depositing such amount, the Insurer calculated the interest at the rate of six per cent per annum and did not pay interest at the rate of 12% per annum as per the award of the Claims Tribunal. Thereafter, an application was filed by the claimant before the Claims Tribunal stating that the Insurance company was required to pay interest at the rate of 12%. Objection was filed by the present appellant wherein it was indicated that the direction regarding payment of interest at the rate of 12% amounted to imposition of penal interest which was forbidden by decision of this Court. It was, therefore, contended that the amount had been rightly paid with interest at the rate of 6%. The aforesaid submission on behalf of the present appellant was negated by the 2nd Motor Accident Claims Tribunal, Cuttack, by order dated 15.1.1996. In the said order the Claims Tribunal on calculation directed the Insurance Company to pay a sum of Rs. 82,400/- towards arrears interest. Against the aforesaid order and direction, the present appeal has been filed on behalf of the Insurer.

2. In the memorandum of appeal apart from raising the question of payment of interest at the rate of 12%, the Insurance Company has also submitted that the question relating to quantum may be re-determined. In this connection, it has been indicated that the appellant was prepared to pay the cost of Rs. 5,000/- as per the direction of this Court in the earlier Misc. Appeal. At the time of hearing of the present appeal, the learned counsel for the appellant also submitted that the claimant may be directed to receive sum of Rs. 5,000/- and the question of quantum may be re-determined. Such a stand has been rightly refused by the counsel for the claimant-respondent. Keeping in view the conduct of the Insurance Company in not complying with the direction of this Court relating to payment of cost even after the dismissal of the S.L.P., no further indulgence can be shown to the appellant, particularly when the quantification was based on evidence on record as well as on the basis of amicable settlement in pre-Lok Adalat.

3. The main question in this appeal relates to the question of payment of 12%

interest from the date of the claim petition on failure of the appellant to pay the amount awarded within the period stipulated. The learned counsel for the appellant relying upon some decisions of this Court has submitted that the direction contained in the original award directing payment of 12% interest as a default clause from the date of claim application amounts to imposition of penal interest and such a direction is a nullity. It is no doubt, true that if a judgment or a direction in a judgment is without jurisdiction and is a nullity, its invalidity can be raised at any stage including the stage of execution. The question is whether the direction contained in the original award was a nullity. It is, no doubt, true that in several decisions of this Court, it has been held that direction regarding payment of penal interest is not contemplated, but in none of the decisions it has been held that such a direction is a nullity. The question had been decided while the award itself was under challenge in appeal. In the present case, the Insurance Company is seeking to raise the question in a collateral proceeding. It is, no doubt, true that the earlier award had been set aside and the matter had been remanded for fresh enquiry. However, the condition precedent for the fresh enquiry having not been fulfilled by the Insurance Company, the Tribunal had rightly observed that there was no scope for further enquiry and as such the earlier award relating to payment of compensation stood confirmed. In the decision reported in *The Branch Manager, United India Insurance Co. Ltd. Vs. Smt. Sulakhani Behera and Another, Smt. Raibari Behera and Another and Sabitri Nayak and Another*, relied upon by the counsel for the appellant, it had been observed that direction regarding payment of penal interest is "unsustainable". Similarly, in the decisions of this Court reported in (1992) 74 CUT 141 (*The Oriental Fire and General Insurance Company Ltd. v. Buli Dei and Ors.*) and *The New India Assurance Company Ltd. and Another Vs. Saraswati Samanta Singhar and Others*, , it had been held that the direction regarding payment of penal interest is "contrary to law". In the decision reported in 1995 (2) CK 1120 (Ori.) (*United India Insurance Co. Ltd. v. Sarat Kumar Sahoo and Anr.*) it was stated that such a direction was "not justified". Merely because an order is illegal or contrary to law, it cannot be said that such order is a nullity. The expression "jurisdiction" is a verbal cast of many colours. What is illegal is not necessarily without jurisdiction, or nullity. A Court having inherent jurisdiction over the subject-matter of the litigation can decide rightly or wrongly even on a question of law and merely because it decides wrongly even on a question of law, it cannot be said that its order is a nullity, though such an erroneous or illegal order is available to be challenged in higher forum as contemplated in law. Where the subject-matter of the litigation is not within the jurisdiction of a Court, the decision rendered by such a Court may be termed as a "nullity". Though loosely stated, many times an illegal order is characterised as "without jurisdiction", in strict sense, such an illegal order cannot be said to be "without jurisdiction" or "nullity". In the present case, the question of payment of interest was a matter within the competence of the Claims Tribunal. Even though it was improper on the part of the Claims Tribunal to direct for payment of interest at the higher rate from a retrospective date, it cannot be said that such a direction

was not within the jurisdiction of the Tribunal in the strict sense of the term.

4. The learned counsel for the claimant-respondent has submitted that the present appeal is not maintainable in law, as the impugned order, which is only a consequential order to give effect to the earlier award. cannot be said to be an award within the meaning of the expression as contained in Section 173 of the Act. Since the contention raised by the appellant has been negated on merit, I do not think it necessary to delve into this question raised by the counsel for the claimant-respondent.

5. For the aforesaid reasons, the appeal filed by the Insurance Company is dismissed. The Insurance Company is directed to pay the amount as per the impugned order dated 15.1.1996 on or before 31st July, 1999. There will be no order as to costs.