

(2012) 10 CAL CK 0050

In the Calcutta High Court

Case No : C.O. No. 879 of 2009 with CAN 5431 of 2011

Manager, Divisional Office-III, National Insurance Co. Ltd.

APPELLANT

Vs

Subrata Baran Sen and Another

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 10 CAL CK 0050

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee and Mr. Abhijit Gangopadhyay, for the Appellant; Debojyoti Basu for the Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—This is an application for restoration of the revisional application which was dismissed for default on 6.6.2011. The cause for non-appearance as shown in paragraph 3 is found satisfactory. The application for restoration is allowed. The revisional application is restored to its original file and number. On consent of parties the main revisional application is taken up for hearing.

2. This revisional application is directed against the judgment and order dated 26th December, 2008, passed by the State Consumer Disputes Redressal Commission, West Bengal in S.C. Case No. FA/08/240 whereby and whereunder the appeal filed by the petitioner was dismissed.

3. The Opposite Party No. 1 claimed to have taken a Janata Personal Expenditure Insurance policy bearing policy No. 100300/47/01/9600022/01/96/30072 from the petitioner which is valid from 1.6.2002 to 31.5.2017 covering an insurance of Rs. 10 lakhs through one Golden Multi Service Club, who under the contract between them and the petitioner, was entitled to market and sell the said policy. It is a specific case of the petitioner that he met with an accident and sustained

an injury on a right knee and the said accident was diarised with the local police station. The petitioner was taken to a Government Hospital and the X-ray indicates the fracture on the right patella. The petitioner was admitted in the hospital on 6th November, 2005 and was released on 7th November, 2005. Subsequently, the petitioner consulted various doctors and ultimately was advised the surgery of total replacement of right knee but for want of money the same could not be done. Ultimately, the Medical Board after examination opined the sufferings to the extent of 70% of permanent disablement and the movement was advised by the said Medical Board with help of escort.

4. The petitioner lodged a claim with the petitioner as the said policy covers the permanent total disablement.

5. The aforesaid statement is denied and refuted by the petitioner by taking a specific plea that there is no evidence of an accident suffered by the petitioner and the certificate submitted, does not bear the date and signature of the doctor. However, the opposite party Nos. 2 and 3 took a stand that in terms of memorandum of understanding between themselves and the petitioner, they have sold the said policy and after lodging of the same, the same has been forwarded to the petitioner for taking steps in the matter.

6. The said opposite parties denied their liability to pay the money claimed before the opposite party No. 1.

7. Before the Consumer Disputes Redressal Forum, Calcutta, Unit II, a point was taken at the time of argument that the opposite party No. 1 was suffering from arthritis before the occurrence of the accident and such fact was not disclosed in the policy and as such is not entitled to a claim.

8. The Consumer Forum negated such objections and after scanning the evidence and the respective pleadings passed an order that the opposite party No. 1 is entitled to a sum of Rs. 4 lakhs and further awarded a compensation of Rs. 5 lakhs for deficiency in services against the petitioner.

9. Before the State Commission, however, a new point was taken that the policy covers the permanent total disablement and does not cover the partial disablement.

10. Apart from the other points which were already taken before the District Consumer Forum, the State Commission observed that the opposite party No. 1 suffered a permanent disablement and did not interfere with the order of the District Forum.

11. Mr. Aniruddha Chatterjee, learned Advocate appearing for the petitioner, submits that one of the terms and conditions of the policy relating to the scope of coverage is a permanent total disablement and when the opposite party himself admits to have suffered 70% of permanent disablement, the same cannot be come in coverage under the said policy and both the forums have proceeded wrongly in passing an order of payment of Rs. 4 lakhs to the opposite

party No. 1.

12. He further submits that the Court in exercise of its power conferred under Article 227 of the Constitution can set aside the order of the Tribunals or subordinate Courts if there is error manifest on the face of the record or to keep them within the statutory bounds. He further submits that the power under Article 227 of the Constitution is wide and discretionary in nature and should be exercised to meet the ends of justice and placed reliance upon a judgment of the Apex Court in case of Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., and in case of Securities and Exchange Board of India Vs. Arihant Catsyn Limited and Ors reported in (2005) 13 SCC 498.

13. Mr. Debajyoti Basu, learned advocate appearing for the Opposite Party No. 1, submits that the revisional application is not maintainable as there is an alternative efficacious remedy by way of an appeal before the National Commission under the Consumer Protection Act, 1986. He further submits that the revisional Court should not reappreciate the facts and evidence. He further submits that the point of permanent total disablement was never taken in the written submission before the District Forum and as such cannot be allowed to be agitated before this Court.

14. In support of the aforesaid contentions, he relied upon the following judgments:-

- 1) Pratap Narain Singh Deo Vs. Srinivas Sabata and Another,
- 2) K. Janardhan Vs. United India Insurance Co. Ltd. and Another,
- 3) Palraj Vs. The Divisional Controller, NEKRTC,
- 4) Raj Kumar Vs. Ajay Kumar and Another,

15. In support of the contention that the power under Article 227 of the Constitution of India should not be exercised by the Court more particularly when there is an alternative efficacious remedy provided under the Consumer Protection Act, 1986, he placed reliance upon an unreported judgment of this Court in case of Great Eastern Appliances Pvt. Ltd. Vs. Santosh Kumar Kanodia @ S.K. Kanodia & Anr. in C.O. 158/2011 decided on 8.7.2011, Jai Singh and Others Vs. Municipal Corporation of Delhi and Another, , Fatima Bibi Ushmal Patel v. Manguben Pranbhai Thakkar and Ors. , Manager Burdwa Cooperative Agricultural and Rural Development Bank Ltd. Vs. Anath Bandhu Dhara 2009 (2) CLJ 685 (Cal), Manager Contai Co-operative Bank Ltd. Vs. Gouri Mandal 2009 (1) CLJ 929 (Cal), ANZ Grindlays Bank and another Vs. President, District Consumer Disputes Redressal Forum and others, Duncans Industries Ltd. Vs. Hindola Dutta Roy (2006) 2 CLJ 165 (Cal), Punjab National Bank Vs. O.C. Krishnan and Others, and R. Jaivel, The President, Mettupatti Multi Purpose Worker's Industrial Cooperative Society Ltd. Vs. State of Tamil Nadu,

16. Having considered the respective submission made at the bar, admittedly,

the opposite party No. 3 suffered a permanent disablement to the extent of 70% as opined by the Medical Board. Although a specific objection was taken by the petitioner before both the forums below that there is no proof of meeting with an accident submitted by the opposite party No. 1, but the said objection fails in absence of any counter evidence.

17. From the written objection filed by the petitioner against the claim petition of the opposite party No. 1 before the District Forum, there is no whisper relating either to permanent partial disablement or permanent total disablement. Even before the District Forum this point was not agitated but was agitated before the State Commission which has been negative by passing the impugned order.

18. The terms and conditions covering the insurance provides the cent percent amount covered by the policy, shall be paid in the event of permanent total disablement. Various eventualities are also incorporated in the scope of coverage and the quantum of percentage of the insured amount.

19. The word "permanent total disablement" is not defined in the Police Scheme. If a particular meaning is to be assigned to a word incorporated there in, the Court must consider firstly the plain and grammatical meaning of the said word, secondly the Court can also take an aid of meaning assigned to the said word in other statutes standing in pari material for the purpose of interpreting the said word.

20. Lord Tucker in case of *A. G. Vs. HRH Prince Ernest Augustus* reported in (1957) 1 AER 49 which reads thus:

I conceive it to be my right and duty to examine every word of a statute in its context, and I use context in its widest sense as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari material, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy.

21. The Apex Court in case of *Common Cause A Registered Society Vs. Union of India and others*, took the external aid in finding the meaning of the word from the provision which stands in pari material.

22. Under the Employees State Insurance Act, 1948, "permanent total disablement" is defined as such disablement of a permanent nature which incapacitates an employee from all works which he was ordinarily capable of performing at the time of accident resulting in such disablement.

23. The Employees State Insurance Act is also enacted for covering the insurance of the employees whereas the policy of the petitioner also covers the insurance to a general public under the Insurance Act. Both the acts are intended to coverage of the policy-holder in the event of permanent disablement.

24. If such meaning is assigned to the permanent total disablement, it would mean a person who is incapable to perform all works which he used to but for

such extent and/or disablement, he cannot.

25. From the report of the Medical Board although the permanent disablement is assessed at 70 (Seventy) percentum but the opposite party No. 1 cannot work independently without the escort.

26. The report of the medical board does not indicate that the disablement suffered by the petitioner can be cured by prolong treatment. There is no chance of any revival of the normal work for such disability which the petitioner suffered.

27. In case of Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, the Supreme Court was considering a matter relating to the compensation awarded under the Motor Vehicles Act and Workmen's Compensation Act. Since both the Acts provide the compensation for loss of ability because of the accident committed either during the course of employment or by the vehicle, the permanent total disablement was construed to be a disablement to the extent of 100% which is opposes to permanent partial disablement.

28. The case in hand does not have any applicability to award compensation for the disablement suffered due to the accident but it relates to disbursement of an amount insured under the policy for an accident upon payment of the premium by the insurer. Therefore, the analogy which the petitioner intend to derive from the provisions of the Motor Vehicles Act and the Workmen's Compensation Act is not tenable.

29. The opposite party No. 1 has vehemently argued that the High Court cannot in exercise of its power conferred under Article 227 of the Constitution of India interfere with the order passed under special statutes providing an alternative efficacious remedy. Mere existence of an alternative remedy does not prevent the High Court to exercise its power under Article 227 of the Constitution of India. It is very wide and discretionary too. The High Court though not denuded from exercising the power under Article 227 of the Constitution even if there is an alternative remedy but it is a self-imposed restriction to maintain the hierarchy of forum provided by the legislature. None of the judgment cited by the opposite party No. 1, it has been laid down that the power of the High Court under Article 227 of the Constitution is taken away in view of the existence of alternative remedy.

30. The series of judgments cited by the opposite party No. 1 for the proposition that the High Court should not exercise the power conferred under Article 227 of the Constitution of India if there is an efficacious alternative remedy available to the petitioner. I do not want to deal those aspects as all the judgments relied on by the opposite party No. 1 does not say that there is a complete ouster of the jurisdiction of the High Court because of the existence of the alternative remedy. As indicate above, it is a self-imposed restriction which the High Court must bare if the alternative remedy is sufficient to grant the relief claimed by the petitioner before it.

31. The High Court in exercise of its power under Article 227 of the Constitution should be slow and circumspect in judging the cause to avoid the reappraisal of the fact. It is only to keep the Subordinate Courts and Tribunals within the statutory bounds such power should be exercised. The High Court can also exercise its power under Article 227 of the Constitution if there is an error manifest on the face of it or for ends of justice.

32. Both the Forums have factually found the entitlement of the opposite party No. 1 and as such this Court in exercise of power under Article 227 of the Constitution should not interfere with such discretionary powers based on factual matrix.

33. Thus, this Court does not find any merit in the revisional application nor does it find any infirmity or illegality in the impugned order.

34. The revisional application, therefore, is dismissed.

35. There shall be no order as to costs.

36. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.

LATER:

Since the warrant of arrest has already been issued by the Consumer District Forum and during pendency of the revisional application the said order was stayed, this Court feels that the said order of stay of the warrant of arrest shall remain operative till four months from date.