

(2003) 05 GAU CK 0021
In the Gauhati High Court
Case No : C.R.P. No's. 15 and 17 of 2003

National Insurance Co. Ltd. and Another APPELLANT
Vs
Sukla Debnath and Others RESPONDENT

Date of Decision : 30-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 140, 140(3), 145(4), 145(5), 146

Citation : (2004) 1 GLT 497

Hon'ble Judges : Amitavaroy, J

Bench : Single Bench

Advocate : D.K. Biswas and S. Lodh, for the Appellant; B. Das, S.C. Majumder, U.K. Majumder and Somik Deb, for the Respondent

Judgement

Amitavaroy, J.—As a common question of law arises in the above Civil Revision Petitions, those were heard analogously and are being disposed of by a common judgment and Order.

2. I have heard Mr. D.K. Biswas, learned Counsel, assisted by Mr. S. Lodh, learned Counsel for the Petitioners and Mr. B. Das, learned senior counsel, assisted by Mr. S.C. Majumder, learned Counsel as well as Mr. Somik Deb, learned Counsel for the Respondents.

3. A brief factual background of both the cases would be necessary as a prelude.

The Civil Revision Petition No. 15 of 2003, filed by the National Insurance Company Ltd. records a challenge to the order dated 21.1.2002, passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in Case No. Misc. (MAC) 52 of 2001 awarding a sum of Rs. 50,000/- as compensation towards "no fault liability" in favour of the claimant-Respondents.

The Respondents No. 1 and 2 being the claimants filed an application u/s 140 of the Motor Vehicles Act, 1988 (as amended) (herein after referred to as "the Act")

claiming interim compensation on account of the death of one Manik Debnath in a motor vehicle accident on 11.10.1999. The offending vehicle being TR-01-1299, a Mini Bus, was insured with the Petitioner Company. The allegation was that the deceased was travelling in the said bus which met with an accident due to mechanical failure, as a result of which he met his death. The deceased was the owner of the vehicle and, therefore, the insured as well.

The Petitioner insurer in its written objection, inter alia, took the plea that as the deceased was the owner of the offending vehicle, he was not the "third party" and, therefore, under the policy he was not entitled to any compensation from it. The Petitioner insurer further pointed out that on the accident, two other claim applications had already been filed by the mother of the deceased and the same were pending before the learned Tribunal.

The learned Tribunal, however, on a consideration of the claim petition as well as the written objection and the documents annexed thereto, held that the Respondents No. 1 and 2, the claimants, were entitled to receive interim compensation of Rs. 50,000/- along with interest at the rate of 9% p.a. from the date of filing of the claim petition and directed the Petitioner company to pay the same within a period of three months from the date of the order. It is this order which is under challenge in the aforementioned Civil Revision Petition. There was a delay in filing this petition which, however, has already been condoned by this Court.

The Civil Revision Petition No. 17 of 2003 has been filed assailing the judgment and Award dated 27.11.1997, passed by the learned Motor Accident Claims Tribunal. West Tripura, Agartala in T.S. (MAC) No. 98 of 1996, awarding a compensation of Rs. 1,64,000/- with interest at the rate of 16% p.a. in favour of the Respondent No. 1/claimant. The claim petition was filed u/s 166 of the Act claiming compensation for the injuries sustained by the Respondent No. 1/claimant out of a Motor vehicle accident on 5.8.1994 in which the vehicle No. TRT- 2345 (Jeep) was involved. The vehicle was insured with the Petitioner company. It was contended in the claim petition that the accident took place due to rash and negligent driving of the said vehicle and as a result of the said accident, the Respondent No. 1/claimant was seriously injured and had to take treatment in G.B. Hospital, Agartala from 5.8.1994 to 8.10.1994. He claimed that he suffered compound and multiple fracture on leg with other injuries on the chest and various parts of the body, as a result of which he had become permanently disabled. An amount of Rs. 6,30,000/- was claimed as compensation.

The Petitioner company in its written statement while contending that the claim was highly inflated, imaginary and exorbitant, denied that the Respondent No. 1/claimant had suffered permanent disability following the injuries sustained in the accident. It further asserted that the vehicle was not being driven at the relevant time by a person having valid driving licence and that the same also did not have valid documents.

The learned Tribunal, however, on a consideration of the pleadings of the parties and the evidence adduced in the proceeding, awarded the aforementioned sum as compensation to the Respondent No. 1 /claimant holding, inter alia, that he suffered permanent disablement out of the injuries sustained in the accident.

The Petitioner company challenged this award before this Court by filing an application under Article 227 of the constitution of India which was registered as Civ. Rev. No. 9 of 1998. The said petition was withdrawn on 18.2.2003 in view of the decision of the Hon''ble Apex Court in *Sadhana Lodh, Appellant v. National Insurance co. Ltd. and Anr. Respondents* in Civil Appeal No. 557 of 2003 (reported in 2003 AIR SCW 930). After the completion of the official formalities thereafter, the Divisional office of the Petitioner company instructed its learned Counsel on 28.3.2003 to file the present revision petition whereafter the learned Counsel took six days in preparing the same. In the process, therefore, a delay of 5 years 37 days had occurred, if computed from the date of the judgment and award.

In the application for condonation of delay, it has been contended that out of the aforesaid period, for 5 years the earlier civil Revision petition was pending before this Court for adjudication. The decision to withdraw the same following the judgment of the Hon''ble Apex Court in the above case was taken by its learned Counsel and thereafter, the matter was referred to the Divisional Office which ultimately approved the move to file the present petition. This was on 28.3.03, that is after 48 days of the date of the withdrawal. Thereafter, the learned Counsel took six days in preparing the revision petition. According to the Petitioner, therefore, the period for which the earlier civil Revision was pending before this Court, is liable to be excluded as in view of the state of law prevailing then, it was pursuing its remedy before this Court in the form of an application under Article 227 of the constitution of India. It has contended that after the said petition was withdrawn, it took about 54 days in completing the necessary formalities and preparing the petition. It has, therefore, prayed that in the above premises, the delay deserves to be condoned.

4. Mr. Das, learned senior counsel and Mr. Deb (Jr.) learned Counsel, appearing for the Respondents have at the outset raised preliminary objections with regard to maintainability of the revision petitions contending that the Hon''ble Apex Court in its decision in *Sadhana Lodh (supra)* had not approved any challenge to the award, passed by a motor Accident Claims Tribunal under the Act by resorting to Section 115 of the Code of Civil Procedure. Mr. Deb with reference to Civil Misc. Application No. 34 of 2003, has further contended that the explanation put forward for condoning the delay is clearly untenable and on that ground as well the corresponding Civil Revision Petition is liable to be dismissed. On the other hand, Mr. Biswas learned Counsel, appearing for the Petitioners has urged that the Civil Revision petitions have been filed following the ratio of the Hon''ble Apex Court in *Sadhana Lodh (supra)* and are, therefore, clearly maintainable in law as well as in facts. Further, the delay in filing the Civil Revision Petition No.

17/2003 has been sufficiently explained and, therefore, the preliminary objections raised, are not entertainable at all.

Elaborating his arguments, Mr. Deb has contended that on a plain reading of the decision of the Hon''ble Apex Court in *Sadhana Lodh (supra)*, it cannot, in any view of the matter, be said that it was held therein that it was permissible to challenge an award, passed by a Tribunal under the Act by a petition u/s 115 CPC. He pointed out that neither this question had fallen for its consideration in the said case nor had the Hon''ble Apex Court decided it in the manner as is sought to be interpreted on behalf of the Petitioner company. To supplement his arguments, Mr. Deb referred to Section 175 of the Act and submitted that as it is clear therefrom that the jurisdiction of a civil court in matters on which a claim Tribunal has been conferred powers to entertain questions relating to any claim for compensation, has been barred, Section 115 Code of Civil Procedure, in face of the bar contained in the above provision of the Act, cannot be invoked challenging any award passed by such Tribunal. He contended that the provisions of CPC have a limited applicability in the proceedings before the Tribunal and this is evident from Section 169 of the Act. According to him, the limit of applicability of the provisions of the CPC cannot be enlarged by holding that an award passed by the Tribunal under the Act, is assailable u/s 115 CPC. He further argued that the learned Tribunal though has the trappings of a court, it cannot be construed to be a civil court, subordinate to the High Court to attract the exercise of power u/s 115 CPC. In support of his submissions, the learned Counsel placed reliance on the following decisions of the Hon''ble Apex Court as well as various High Courts:

- (1) *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*,
- (2) AIR 1968 Goa 78 (*Branch Manager, The British India General Insurance Co. Ltd. Margao, Petitioner v. Chanbi Shaikh Abdul Kadar, Respondent*);
- (3) AIR 1974 KAR 109 (*State of Mysore, Petitioner v. K.L. Subbanna and Ors., Respondents*);
- (4) *Laxminarain Misra Vs. Kailash Narain Gupta and Others*,
- (5) AIR 1976 Raj 173 (*The United India Fire and General Insurance Co. Ltd., and Anr., Appellants v. Mst. Sayar Kanwar and Ors., Respondents*);
- (6) *Rajasthan State Road Transport Corporation, Jaipur Vs. Kalawati and Others*,
- (7) AIR 1983 Kar 164 (*Revanappa, Petitioner v. Gunderao and Ors. etc., Respondents*);
- (8) *Barkat Singh and Others Vs. Hans Raj Pandit, Driver and Others*,
- (9) *New India Assurance Co. Ltd. Vs. Rafeeka Sultan and Others*,

Mr. Das, learned senior counsel, appearing for the Respondents in CRP No. 15/2003 adopted the arguments of Mr. Deb.

5. With regard to the delay in filing CRP No. 17/2003. Mr. Deb contended that no explanation, far less any satisfactory explanation has been provided to explain the same and on that ground as well the revision petition is liable to be dismissed. According to him, the Petitioner company had chosen to file an application under Article 227 of the Constitution of India to assail the award. It was a conscious decision on the part of the Petitioner company and it being so, it cannot now, after a period of over five years, take the stand that it was pursuing a wrong remedy. He has further argued that after the decision was taken to withdraw the earlier revision petition, immediate steps, as apparent from the records, were not taken and therefore, deliberate negligence and in-action on the part of the Petitioner company is writ large and consequently, the delay ought not to be condoned by this Court.

In reply, Mr. Biswas has argued with equal force that the basic premise in which the issue has to be approached is that in legal jurisprudence, there cannot be any wrong without a remedy. He argued that an Insurance Company deals with public funds and being the custodian of public money is entitled in law to have a forum to challenge a decision of a Tribunal which is *ex facie* arbitrary, illogical, preposterous, void in law and which if allowed to continue would result in abuse of the process of court. Replying to the contention of Mr. Deb, relating to Section 175 of the Act, Mr. Biswas argued that the same relates to jurisdiction of the Tribunal to deal with matters before it relating to any claim for compensation and has nothing to do with the illegalities that may vitiate an award of the Tribunal in adjudicating the issues before it. Mr. Biswas clarified that it is not the conferment of the jurisdiction on the Tribunal that is sought to be challenged by the Insurer. Rather, it is the manner of its exercise in cases like the present ones that is questioned. He similarly contended that Section 169 of the Act deals with the procedure to be followed by the learned Tribunal and the same cannot, therefore, control the exercise of power u/s 115 CPC available to the High Court to examine the legality and validity of an order or the award, passed by the Tribunal. He contended that keeping in view the question that was raised before the Hon'ble Apex Court in *Sadhana Lodh* (supra) and the decision rendered in it, it is clear therefrom that in cases where an insurer is inclined to challenge the award on grounds beyond those enumerated in Section 149(2) of the Act, remedy u/s 115 CPC would be available to it. He argued that the Hon'ble Apex Court having held therein that it was not open for an insurer to assail an award under Article 227 of the Constitution of India on grounds not contemplated under Section 149(2) of the Act, bar of the remedy u/s 115 CPC would leave an insurer without any legal remedy even in cases where per se the award is a non-challant and is preposterous one saddling the insurer with a liability which is unjust and unfair.

With regard to the delay, Mr. Biswas has argued that the earlier Civil Revision Petition was filed in view of the state of law prevailing then. The same remained pending before this Court for long five years. With the change of law, following the decision in *Sadhana Lodh* (supra), the petition was withdrawn and after

completing the necessary formalities, was refiled in the present form. He contended that the decision to withdraw the earlier civil Revision Petition was taken by the learned Counsel for the Petitioner company and thereafter, without any undue delay the formalities were completed and the present petition has been filed. According to him, the delay of 5 years 37 days is an ostensible one in the above facts and circumstances and the delay after withdrawal of the earlier Civil Revision petition having been satisfactorily explained, the same deserves to be condoned. Mr. Biswas relied on the decision of the Hon'ble Apex Court in *Sadhana Lodh (supra)* and that of this Court in C.R.P. No. 36 of 1999 (*National Insurance Company Ltd., Petitioner v. Smti Haran Das and Ors., Respondents*), disposed of on 17.12.1999 in support of his submissions.

In reply, Mr. Deb has contended that as the legislature in its wisdom has prescribed the limited grounds on which an insurer can defend a claim application or its liability under the policy, to permit it to assail the award on other grounds by invoking Section 115 CPC would tantamount to enlarging the scope of Section 149(2) of the Act which is incomprehensible. Relying on decisions of the Hon'ble Apex Court in *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, and in *Nalakath Sainuddin Vs. Koorikadan Sulaiman*, the learned Counsel argued that the scope of revisional jurisdiction is akin to that of one in an appeal and in face of the express bar contained in Section 149(2) of the Act, if the insurer is allowed to challenge an award u/s 115 Code of Civil Procedure, on grounds beyond those mentioned in the aforesaid provision of the Act, it would amount to enlarging the scope thereof and thus would fly in the face of the restrictions contained in the said provision of the Act.

6. For the sake of convenience, the aspect of delay may first be examined. The judgment and award dated 27.11.1997 which is the subject matter of challenge in C.R.P. No. 17/2003, was assailed initially by filing an application under Article 227 of the Constitution of India which was registered as Civ. Rev. No. 9/98. Understandably, the said remedy was opted for by the Petitioner in view of the state of law that an insurer was not permitted to prefer an appeal under the Act on grounds beyond those specified u/s 149(2) of the Act thereof. The aforementioned Civil Revision petition was filed in time and remained pending till it was withdrawn on 18.2.2003 following the decision of the Hon'ble Apex Court in *Sadhana Lodh (supra)*. Thereafter, this present revision petition has been filed after a time-lag of 54 days. In between, a Full Bench of this Court in *Milan Rani Saha (Smti.) Appellant v. New India Assurance Co. Ltd. and Ors., Respondents*, reported in 2000(2) GLT393, held that in appropriate cases, it was permissible for the insurer to challenge an award under Article 226/227 of the Constitution of India. The Civil Revision Petition filed earlier, therefore, remained pending before this Court and it was after a lapse of almost five years with the advent of the decision in *Sadhana Lodh (supra)*, that the learned Counsel for the Petitioner on the basis thereof, advised it to withdraw the same. The Petitioner company being an impersonal machinery with compulsory official formalities to be adhered to, the time that was consumed thereafter, before filing the present revision petition,

cannot be said to be as a result of deliberate in-action or negligence on its part. It was pursuing a remedy before this Court under Article 227 of the Constitution of India in view of the law interpreted and understood at the relevant time and, therefore, it cannot be held responsible for the delay of 5 years 37 days, as it appears on record.

In the above premises, having regard to the peculiar facts and circumstances of the case, I am not inclined to non-suit the Petitioner on the ground of delay. The delay in filing the Civil Revision Petition No. 17 of 2003 is, therefore, condoned.

7. Now, the hub of the controversy. The preliminary objection with regard to the maintainability of the petitions u/s 115 CPC demands immediate attention as a decision thereon would have a vital bearing on the final outcome thereof. In order to appreciate the rival contentions of the parties, it would be appropriate to examine the scheme of the Act pertaining to the issue.

Chapter XI of the Act deals with the insurance of Motor Vehicles against third party risks. Section 146 makes it compulsory for every person to obtain a policy of insurance complying with the requirements of the chapter before using or allowing any other person to use a motor vehicle in a public place. The requirements of such policy and the limits of liability thereunder have been set out in peremptory language in Section 147 of the Act. The duties of an Insurance Company to satisfy judgments and awards against persons insured in respect of third party risks, have been laid down in Section 149 of the Act. The defences available to an insurer in a proceeding under the Act involving the policy have been enumerated in Sub-section (2) of Section 149 of the Act. It, inter alia, provides that the insurer would not be liable to pay any sum following a judgment or award in such a proceeding unless before the commencement thereof, it has a notice through the court or the claims Tribunal of the said proceeding or in respect of the judgment and award passed thereunder so long the execution thereof is stayed and in such a case, the insurer would have a right to be made a party thereto and to resist the claim on the grounds available to it under Sub-section (2) of Section 149 of the Act. Sub-sections (4) and (5) of Section 145 permit the insurer to recover the amount payable by it from the owner laying down the circumstances therefor. The categorical and emphatic language used in Sub-section (7) of Section 149 makes it clear that no insurer to whom notice of the proceeding has been given shall be entitled to avoid its liability to any person entitled to the benefit of the judgment or award that is passed therein, otherwise than in the manner provided in Sub-section (2) of Section 149 of the Act, Emphasis clearly therefore, is on the limited grounds on which an insurer can resist a claim pertaining to the policy issued by it and made in a proceeding contemplated under the Act.

Chapter X of the Act deals with the "liability without fault in certain cases" and u/s 140 where a death or permanent disablement of any person results from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle or as the case may be, the owners of the vehicles shall, jointly and

severally, be liable to pay compensation in respect of such death or disablement in accordance with the provision thereof. Sub-section (3) of Section 140 of the Act provides that for such claim, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person and such a claim shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made.

Provisions with regard to applying for compensation arising out of motor accidents and matters ancillary thereto have been made under Chapter XII of the Act. u/s 168, a Claims Tribunal has been conferred the power to entertain an application for compensation and to award an amount by way of compensation as would appear to it to be just. Section 169 of the Act prescribes the procedure and powers of the Claims Tribunal and lays down that it would have all the powers of the civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling discovery and production of documents and material objects and for other purposes as maybe prescribed. In general, however, the Claims Tribunal in holding any inquiry u/s 168 of the Act may follow such summary procedure as it may think fit. Section 170 of the Act which has a material bearing on the issue in hand requires that where in course of any inquiry, the Tribunal is satisfied that there is a collusion between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim, it may for reasons to be recorded in writing direct that the insurer who maybe liable in respect of such claim shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on or any of the grounds that are available to the person against whom the claim has been made. It is evident from the aforementioned section of the Act that it is only under the circumstances referred to therein that an insurer can resist the claim in a proceeding before the claims Tribunal on a ground other than those mentioned in Section 149(2) of the Act. Section 175 which prescribes a bar on the jurisdiction of civil courts lays down that where any claims Tribunal has been constituted for any area, no Civil Court would have jurisdiction to entertain any question relating to any claim for compensation which maybe adjudicated upon by the Claims Tribunal for that area.

The provisions of the Act adverted to as above, clearly denote that the Legislator has provided a complete code, delineating, inter alia, the compulsory liability of an insurer under Chapter XI of the Act and the grounds available to it to resist any claim arising out of the policy issued by it. The intentions raised on behalf of the parties thus will have to be examined in this background.

8. The Act is a piece of beneficial legislation and the Chapters referred above

have been incorporated to ensure that innocent and unwary victims of vehicular accidents are not denied adequate compensation for death or bodily injury arising out of the same. The mandate for a compulsory insurance as a condition precedent for use of a vehicle in public place is a clear indicator of the said intention. The requirement of such policy and the limits of liability have been clearly outlined in Section 147 of the Act. Section 149 marks the liability of an insurer allowing if limited defences to resist the claim under the policy issued by it. Sub-section (7) of Section 149 of the Act demonstrates that an insurer cannot escape its liability undertaken any it in its policy except on grounds set out in Section 149(2) of the Act. The clear legislative mandate, therefore, is an insurer cannot resist a claim involving its policy or question an award passed in a related proceeding involving the policy on any ground beyond those permitted u/s 149(2) of the Act. The Act is a special legislation and the prescriptions thereof cannot be sidelined while examining pleas and contentions arising therefrom. Analogy from common law principles cannot be drawn in such matters. I am, therefore, of the view that bearing in mind the limited grounds of defence available to an insurer u/s 149(2) of the Act and the provision made in Section 170 thereof, permitting it to take up all other available defences, it would not be permissible to hold that in cases where Section 170 of the Act is not applicable, an insurer can still resist the claim arising out of the policy or challenge an award passed in connection therewith on grounds beyond those specified in Section 149(2) of the Act. Any challenge under Article 227 of the Constitution of India within the constricted parameters set down by consistent judicial pronouncements would, however be a different proposition altogether. In other words, if an insurer is not allowed to challenge an award in an appeal on grounds beyond those specified in Section 149(2) of the Act, in my view, it cannot be permitted to do so in any other forum under any legislation unless the same, with reference to the said provision of the Act, clearly permits it to do so. Section 115 of the CPC is no answer to this.

9. It is time to turn to two recent decisions of the Hon'ble Apex Court. In National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, the question which fell for consideration before the Hon'ble Apex Court was where an insurer does not prefer an appeal u/s 173 of the Act, is it open for the insurer to prefer an appeal against the award questioning the quantum of compensation as well as the findings as regards the negligence of the offending vehicle. The Hon'ble Apex Court while referring to the scheme of the Motor Vehicles Act, 1939 and the Act of 1988, more particularly Section 149 of the latter Act answered the question in the negative and held that if an insurer is permitted to contest the claim on grounds other than those mentioned u/s 149(2) of the Act, it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for. Referring to Sub-section (7) of Section 149 of the Act, it held that an insurer cannot avoid its liability on any other ground except those mentioned in Sub-section (2) of Section 149 of the Act. It; therefore, ruled that if an insurer is aggrieved by an award, it can, therefore, file

an appeal only on the grounds specified u/s 149(2) of the Act and it would be permissible for it to file an appeal challenging the quantum of compensation or negligence or contributory negligence if the conditions of Section 170 of the Act are satisfied and the award is adverse to the interest of the insurer. It further held that if a permission is sought by the insurer in the circumstances contemplated u/s 170 of the Act and is granted the insurer can contest the claim on merits and it would then be open for it to file an appeal against the award on merits as well. If such a permission is rejected, the insurer can challenge that order while filing an appeal on the grounds available to it u/s 149(2) of the Act. The insurer can also approach the Tribunal for rectification of the award in case a fraud is perpetrated in obtaining the award.

In *Sadhana Lodh* (supra), the insurer had assailed the award of the learned Tribunal before this Court under Article 226/227 of the Constitution of India. The learned Single Bench dismissed the application but a Division Bench in appeal entertained the same and interfered with the compensation. It was contended before the Hon''ble Apex Court that when a remedy of appeal was available to the insurer an application under Article 227 of the Constitution was misconceived. It was countered by contending that as the insurer has limited grounds available for appeal it was open for it to file an application under Article 226/227 of the Constitution. The Hon''ble Apex Court ruled that a right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing an application under Article 226/227 of the Constitution on the premises that the insurer has limited grounds available for challenging the award given by the learned Tribunal. It was thus held that the application under Article 227 of the Constitution filed by the insurer was wholly misconceived. It was observed thereafter that where a remedy by way of appeal is not provided for against an order, the remedy available to the aggrieved person is to file revision before the High Court u/s 115 CPC but if such a remedy of revision u/s 115 CPC is expressly barred then an application under Article 227 of the Constitution would lie. The Hon''ble Apex Court thereafter dealt with the scope and ambit of the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The judgment and order of the Division Bench of this Court was set aside granting liberty to the insurer to file an appeal if it is permissible under the law.

What transpires from the above decisions of the Hon''ble Apex Court is that an insurer can resist the claim in a proceeding involving its policy or challenge an award passed therein by preferring an appeal only on grounds limited by Section 149(2) of the Act. It is only if an insurer is impleaded u/s 170 of the Act that it is permissible for it to resist the claim or challenge the award on other grounds as well. The scope of the grounds enumerated u/s 149(2) of the Act cannot be enlarged in any manner other than the one prescribed u/s 170 of the Act. The application filed by the insurer in *Sadhana Lodh* (supra) was held to be not maintainable on the said considerations. According to Mr. Biswas, the Hon''ble Apex Court had ruled therein that in view of the limited grounds available to the

insurer to prefer appeal, it is permissible for it to file a revision petition u/s 115 CPC challenging the award on grounds other than those u/s 149(2) of the Act.

Reading between the lines of the said decision I am unable to locate any such observation. The discussion which finds place in the decision *Sadhana Lodh* relating to Section 115 Code of Civil Procedure, in my view, was generated to underline the circumstances under which an application under Article 227 of the constitution is contemplated in general. There is no specific reference to the provisions of the act in this connection. This is amply clear also from the concluding lines of the decision by which the insurer was directed to prefer an appeal, if permissible under the law. Apparently, in *Sadhana Lodh* (supra), the insurer sought to challenge the award on grounds beyond those available u/s 149(2) of the Act. Had the Hon'ble Apex Court ruled that under those circumstances, an application u/s 115 CPC is contemplated, in my considered view, it would have clearly indicated the same in the decision and further would have allowed the insurer to file such a revision petition. This has not been done. As a matter of fact, such a question seemingly was not agitated in the said case. If the grounds of challenge as laid down in Section 149(2) of the Act cannot be allowed to be enlarged by filing an application under Article 227 of the Constitution, the same cannot be permitted to be done by invoking Section 115 CPC as well.

In view of the preponderant judicial opinion as above, I am unable to occur with the learned Counsel for the Petitioner that the revision petitions u/s 115 CPC in the present setting of facts are maintainable. The scheme of the act referred to above does not permit any remedy other than those prescribed by it. If an application u/s 115 CPC is allowed to be filed invoking the revisional jurisdiction of this Court to entertain the challenge of an insurer to an award beyond the grounds specified u/s 149(2) of the Act, it would amount to doing violence to the scheme which has been adumbrated by the legislature. This, in my view, is not permissible. The insurer, if aggrieved, will have to seek remedy within the four corners of the Act. As it is, the insurer is not without any remedy and Section 170 is a tailor made provision to remedy situations embracing eventualities beyond the scope of the permissible ground of defence u/s 149(2).

10. Mr. Biswas in course of his arguments had strenuously contended that there are cases where the learned tribunals out of mis-placed sympathy or erroneous interpretation of the law or facts apparent on the face of the records award exorbitant amounts of compensation and that if the insurers in such circumstances are not permitted a forum to assail the same, it would result in squandering of public money in undeserving cases and, therefore, on that consideration as well, the revisional jurisdiction of this Court should be allowed to be invoked.

Mr. Biswas maybe right in so contending and there maybe some stray decisions in the lines indicated by him, but that hardly can be a ground to enlarge the scope and ambit of the provisions of the Act laying down in no uncertain terms

the defences available to an insurer thereunder. It is not that the legislature has been unmindful of such possibilities and it is, therefore, that an opening has been provided to the insurer in the form of Section 170 of the Act. If an insurer is vigilant and alert from the very initiation of the proceeding and contents the same appropriately, in my view, possibility of such decisions would be minimised to a great extent.

11. Be that as it may, in the face of clear and categorical legislative mandate contained in Section 149 of the Act and the state of law as above, I am of the view that the petitions filed u/s 115 CPC are not maintainable.

12. In view of the above conclusion, I would not consider it necessary to examine the other contentions raised by the parties with regard to the reach and content of Section 115 Code of Civil Procedure.

13. In the result, the C.M. Application No. 34 of 2003 stands allowed and the Civil Revision Petitions No. 15/2003 and 17/2003 are rejected.

In the facts and circumstances of the case, there would be no order as to costs.