
(2014) 05 GAU CK 0014
In the Gauhati High Court
Case No : W.P. (C) No. 7008 of 2005

National Insurance Co. Ltd.	Vs	APPELLANT
Manju Majumdar and Others		RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 149(2) 149(2) 166 170 173

Citation : (2015) 4 ACC 99 : (2015) ACJ 2019

Hon'ble Judges : Abhay Manohar Sapre, C.J.;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : Sanchita Roy and B.K. Purkayastha, Advocate for the Appellant; A.R. Agarwal, Advocate for the Respondent;

Judgement

Abhay Manohar Sapre, C.J.

1. Heard Ms. Sanchita Roy, learned counsel for the petitioner, in W.P. (C) No. 7008 of 2005, W.P. (C) No. 7278 of 2004, W.P. (C) No. 3208 of 2005 and W.P. (C) No. 2105 of 2005 and Mr. B.K. Purkayastha, learned counsel for the petitioner in W.P. (C) No. 2556 of 2005, W.P. (C) No. 4619 of 2004 and W.P. (C) No. 3336 of 2001. Also heard Mr. A.R. Agarwal, learned counsel for the respondents in W.P. (C) No. 2105 of 2005. The decision rendered in this writ petition, i.e., W.P. (C) No. 7008 of 2005 shall also govern disposal of other connected writ petitions being W.P. (C) No. 7278 of 2004, W.P. (C) No. 2556 of 2005, W.P. (C) No. 3208 of 2005, W.P. (C) No. 4619 of 2004, W.P. (C) No. 3181 of 2000, W.P. (C) No. 3336 of 2001 and W.P. (C) No. 2105 of 2005 because the issues involved in all these writ petitions are common.
2. This writ petition is filed under Article 227 of the Constitution of India against an award dated 29.3.2005 passed in M.A.C. Case No. 177 of 2002 by the Member, M.A.C.T., Bongaigaon.
3. The facts of the case lie in a narrow compass. They, however, need mention in

brief infra.

4. Petitioner, an insurer of an offending vehicle, suffered award under section 166 of the Motor Vehicles Act, 1988 in Claim Case No. M.A.C. Case No. 177 of 2002 whereby the petitioner was made to pay along with insured a sum of Rs. 4,39,700 with interest at the rate of 9 per cent per annum for the death of the claimant's son Dibendu Majumdar, who died in a motor vehicle accident on 12.5.2002. It is against this award the petitioner (insurer) felt aggrieved and instead of filing an appeal under section 173 of the Act, filed the present writ petition under Article 227 of the Constitution of India questioning its legality and correctness. It is this writ petition which was dismissed by a Division Bench of this court by order dated 3.3.2006 holding that it is not maintainable. The petitioner felt aggrieved and filed a special leave to appeal being Civil Appeal No. 7632 of 2012 [Special Leave Petition (C) No. 10128 of 2006] to the Supreme Court of India.

5. The Supreme Court vide its order dated 9.10.2012 allowed the appeal and set aside the order passed by this court and remanded the case for deciding the matter in terms of the direction given in the said order. This is how these writ petitions are listed today for disposal in accordance with law in the light of the direction given by the Supreme Court in its order.

6. The order passed by the Supreme Court reads as under:

"(1) Delay condoned.

(2) Leave granted in all the special leave petitions.

C.A. Nos. arising out of S.L.P. Nos. 10128, 10130, 10132, 10133, 10315, 16460, 10390 and 10217 of 2006.

(1) These appeals are directed against the common judgment and order dated 3.3.2006 passed by the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh in Writ Petition Nos. 7008 of 2005, 7278 of 2004, 2556 of 2005, 3208 of 2005, 4619 of 2004, 3181 of 2000, 3336 of 2001 and 2105 of 2005 whereby the High Court has dismissed the appeals.

(2) We have heard learned counsel for the parties to the lis.

(3) The issues raised in these appeals, in our view, are no more res integra, in view of the decision of this court in the case of United India Insurance Company Ltd. Vs. Shila Datta and Others, .

(4) Following the observations made in the aforesaid decision, these appeals are disposed of. We set aside the impugned judgment and order passed by the High Court and remand the matters to the High Court.

(5) We request the High Court to restore the appeals to its file and decide the same on merits and in accordance with law after issuing appropriate notice to both the parties in each case.

Ordered accordingly."

7. Mere perusal of the aforesaid order passed by the Supreme Court would make it clear that the Supreme Court disposed of all the appeals in the light of its earlier decision rendered in the case of United India Insurance Company Ltd. Vs. Shila Datta and Others, .

8. In our considered view, in the light of the law laid down by the Supreme Court in United India Insurance Company Ltd. Vs. Shila Datta and Others, , now the law on the question is: insurer has a right of appeal under section 173 of the Act even when it does not obtain permission under section 170.

9. This is clear from the following observation of their Lordships:

"(2) On the said reference made, the following questions arise for our consideration, in regard to the position of an insurer, under the Motor Vehicles Act, 1988 ("the Act" for short):

(i) Whether the insurer can contest a motor accident claim on merits, in particular, in regard to the quantum, in addition to the grounds mentioned in section 149 (2) of the Act for avoiding liability under the policy of insurance?

(ii) Whether an insurer can prefer an appeal under section 173 of the Motor Vehicles Act, 1988, against an award of the Motor Accidents Claims Tribunal, questioning the quantum of compensation awarded?

xxx xxx xxx

(22) We, accordingly, answer the points arising from the reference as under:

(i) Points (i) and (ii) are held in favour of the insurers. The matters covered by points (i) and (ii) are to be placed before the respective Benches for consideration accordingly.

(ii) Points (iii) to (v) which may come in conflict with National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , are referred to a larger Bench. We, accordingly, direct these matters (that is, cases where the insurer alone was the appellant before the High Court and where the insurer was only a noticee under section 149(2) and not an impleaded respondent in the claim petition), to be placed before the Hon"ble Chief Justice for constituting a larger Bench to consider the points (iii), (iv) and (v) raised by the insurers."

10. In our view, therefore, the remedy for the petitioner now lies in challenging the legality and correctness of an award by filing an appeal under section 173 of the Act rather than to challenge it in a writ petition under Article 227 of the Constitution of India. Since this position was clarified by the Supreme Court in the case of United India Insurance Company Ltd. Vs. Shila Datta and Others, , which was rendered during pendency of this writ petition, we consider it proper and in the interest of justice to grant liberty to the petitioner to file an appeal under section 173 of the Act.

11. Accordingly and in the light of the foregoing discussion, we permit the petitioner to withdraw these writ petitions and file regularly constituted appeal under section 173 of the Act against the impugned awards before this court.

12. In case any appeal is filed by the petitioner within three months from the date of this order, the said appeal shall be decided on merits as if filed within limitation. Needless to say, appeal once filed shall ensure compliance of proviso to section 173 by the insurer.

13. We also grant liberty to the claimants to file appeal against the impugned award for enhancement of the compensation in case they so wish or to file cross-objection in an appeal filed by petitioner against the impugned award, as the case may be, for prosecuting their grievance.

14. Registry is directed to return the copy of the impugned award annexed by the petitioner in the writ petitions provided it is replaced by its photocopy to enable the petitioner to file appeal as permitted by the court.

15. Let this be done within two weeks so as to enable the petitioner to file appeal within the time fixed by this court.

16. We, however, make it clear that we have not expressed any opinion on merits and demerits of the controversy raised by the petitioner in these writ petitions and, therefore, the appellate court would decide the appeal on its merit strictly in accordance with law without being influenced by our decision. We also make it clear that the appellate court while passing any interim order in any of the appeals would also take into account all interim orders passed in these writ petitions. No costs.