
(2000) 06 GAU CK 0027
In the Gauhati High Court
Case No : Writ Petition (C) No. 2738 of 2000

National Insurance Co. Ltd.	Vs	APPELLANT
Member, Motor Accident Claims Tribunal and Another		RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 140, 147, 149, 149(2), 170

Citation : (2002) ACJ 1126 : (2000) 2 GLT 501

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : S.S. Sharma, D.K. Bhatra, K.K. Bhatra and S.K. Sangneria, for the Appellant; R. Choudhury, for the Respondent

Judgement

1. This is an application under Article 226/227 of the Constitution of India challenging an award passed by the Motor Accident Claims Tribunal, Kamrup, Guwahati passed in MAC Case No. 128/96 and 129/96 in the following circumstances:

2. On 18.2.1996 Bhabesh Sarma, Smti Ranu Devi, Smti Usha Devi and Smti Sumi Devi all went to Nalbari via National Highway No.31 from Guwahati by an Auto-rickshaw bearing No.9285 in order to invite their relatives for some rituals. Auto-rickshaw was driven by Sri Bhabesh Sarma, holding a valid driving licence at a normal speed. The Auto-rickshaw reached Babikura at about 12-00 noon when the truck bearing No. DL 1CA 4649 proceeding in the same direction at a high speed and driven in a rash and negligent manner hit the Auto-rickshaw resulting instantaneous death of all the innated of the Auto-rickshaw. The husband and the minor son of the deceased Usha Devi filed claim petitioner claiming compensation of Rs. 9,65,000 as compensation in case No. 128/96 and in case No. 129/96 the father of the deceased Smti Sumitra Devi has filed claim petition claiming Rs. 3,00,000 as compensation. Written statements were filed by the Insurance Company in both the claim petitions. The owner of the truck did not

contest the cases. The learned Tribunal after examination of the witnesses and considering the materials on records awarded a total compensation of Rs. 4,04,000 in case No. 128/96 and in case No. 129/96 a sum of Rs. 1,25,000 was awarded inclusive of no fault award with interest at the rate of Rs. 12% per annum with effect from 18.4.1996 i.e. the date of filing the claim petition till payment. The learned Claim Tribunal In passing the award, took note of the evidence on record which showed that Auto-rickshaw in question was hit due to rash and negligent driving by the truck driver and the occupants of the auto-rickshaw died. Ext.2 is the accident information report submitted by the OC, Kamalpur P.S. and the Ext. 1 shows that Usha Devi and Sumitra Devi died in the accident in which the truck bearing No. DL1C/A 4649 was involved in the accident. The claimants submitted the charge sheet and copies of the Post mortem reports. The learned Tribunal held that the vehicle (truck) was driven in rash and negligent manner and accordingly the awards were made.

3. The Insurance Company preferred this application under Article 226/227 of the Constitution mainly on the ground that owner, driver and Insurer of other vehicle namely the Auto-rickshaw was exonerated from the entire liability. It also assailed the conclusion of the learned Tribunal. In view of the age of the deceased and status of their parents an award of Rs. 1,25,000 was not the just compensation but excessive. In other words the insurance Company questioned the quantum of the compensation awarded to the Claimants. No reasons are assigned as such as to why an Appeal was not preferred. Under the motor Vehicles Act Appeal is provided u/s 173 of the Act and that appeal is restricted in view of the provision of the Section 149(2) and 170 of the Act. A full Bench Decision of this Court in United India Insurance Co. Regional Office v. Member Motor Accident Claims Tribunal, Lakhimpur and Ors. reported in 1992(2) GLR 391 held that no Appeal lies at the instance of the Insurance Co. questioning the quantum of compensation and appeal is maintainable only on the limited grounds specified in Section 149(2) of the Act. Insurance Company when impleaded as a party by the Court as enjoined in Section 170 of the Act, it can only be permitted to contest the proceedings on merits only if the conditions cited in the Section are found to be satisfied and for that purpose -the Insurance Company has to obtain in writing an order from the Tribunal and that should be a reasoned order unless that procedure is followed. The Insurance Company can not have a wider defence on merits than that is available to it by way of statutory defence Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, Mr. S.S. Sarma, learned counsel for the petitioners strenuously argued that the learned Tribunal passed an omnibus award giving no reason awarding a compensation of Rs. 1,25,000 in the case of minor. Life as well as law are not a logic nor the embodiment of obdurate scientific character. Life is a process that has been played for untold ages. In search of "Just compensation" for loss of life or limb one is not to confine only on the odious comparisons nor the same is to be measured in calculus. In this area one is required to engage one self in some guess work. Insurance Company under the scheme of the Act is not in a position

to challenge the quantum of an Appeal. In the circumstances the learned counsel for the petitioner submits that said issue can very well be examined by this Court under Article 226/227 of the Constitution of India to render justices between parties. In the matter of settlement of the claim for compensation one cannot lose sight of the delay in settling the insurance claim. In that view of the matter 1988 Act the Parliament introduced the provision of Section 140 for providing an interim measure for no fault to order for compensation on the member on no fault. Prior to the incorporation of the said Act two of the decisions of the Supreme Court in Ali Motor Owners Insurance Company reported in 1981 4 SCC 680 pointedly mentioned to the road hazard vis a vis delay for settlement of claim and the Supreme Court in the aforesaid judgment appealed to the Legislature for remedying the situation by suitable legislation. The new Act sought to remedy the situation by incorporation Section 140 and also introduced provisions of Appeal, to avoid prolongation of the litigation battle by appeal by the Insurance Company. Insurance Company in fact is the undertaker to ensure prompt payment and under the Act is duty bound to comply with the award for which the vehicle was insured in conformity with the Statutes. The Supreme Court also dealt with this aspects of the matter in the decision of Chinnama George and Others Vs. N.K. Raju and Another, in the following passages -

"... Provisions of Law cannot be undermined in this way. We have to give effect to the real purpose to the provision of law relating to the award of compensation in respect of the accident arising out of the use of the motor vehicles and cannot permit the insurer to give him right to defend or appeal on grounds not permitted by law by a backdoor method. Any other interpretation will produce unjust result and open gates for the insurer to challenge any award. We have to adopt purposive approach which would not defeat the broad purpose of the Act Court has to give effect to true object of the Act by adopting purposive approach.

... The court should take care to ascertain this position on proper consideration so that the statutory bar against the insurer in a proceeding of claim of compensation is not rendered irrelevant by the subterfuge of the insurance company joining the insured as a co-appellant in the appeal filed by its. This position is clear on a harmonious reading of the statutory provisions in Sections 147, 149 and 173 of the Act. Any other interpretation will defeat the provision of Sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer.."

4. Mr. Sarma, lastly submitted that the provision for appeal is restricted by the Insurance Company (sic) the court can look into the matter in exercising superintending jurisdiction under Article 227 of the Constitution of India or under Article 226 of the Constitution for judicial review and look to the legality and validity of the award. The High Court no doubt is entrusted the power of judicial review to ensure the Rule of the law and to see that the authorities/Tribunal acted within the confines of law. The power is basically meant to remove fragrant

violation of the law that cause grave miscarriage of justice. In aid of Article 226/227 it does (sic) not open for the Court to reappraise the evidence. Article 226 is not a carte blanche to correct all errors of law as well as of fact. In this case in hand the Tribunal considering the totality of the evidence on record awarded the sum in this two claim petitions for the loss of life of four persons including that of minor. The decision of the Tribunal is based on appreciation of evidence which cannot be faulted as arbitrary. The Court while dealing an application under Article 226/ 227 of the Constitution cannot over look the object, true scope of the statutory provisions as well as the statutory bar against the injured in a proceeding of a claim of compensation so that the legislative intent is not rendered irrelevant by liberal exercise of power under Article 226/227 of the Constitution of India. In the aid of power under Article 226/227 the statutory scheme should not be allowed to be defeated throwing the legal representatives of the deceased or the injured in the accident to a prolonged litigation totally at the instance of the Insurance Company. Considering all the aspects of the matter and perusal of the award, I do not find any scope to intervene in this matter and accordingly this application is disposed of.