
(2006) 01 GAU CK 0097
In the Gauhati High Court
Case No : Writ Petition (C) No. 353 of 2005

National Insurance Company Ltd.

APPELLANT

Vs

Anjan Dasgupta and Another

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149(2), 163A, 166, 173

Citation : (2006) GLT 738 Supp

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : D.K. Biswas and S. Lodh, for the Appellant; Somik Deb, for the Respondent

Judgement

T. Vaiphei, J.—I have heard Mr. D.K. Biswas, the learned Counsel for the Petitioner and Mr. Somik Deb, the learned Counsel for the Respondents.

2. This is an application under Article 227 read with Article 226 of the Constitution of India for quashing the judgment and award dated 19.05.2004 which merged with the review order dated 10.11.2004 in T.S. (MAC) No. 639 of 1999 passed by the learned Member, Motor Accident Claims Tribunal (Court No. 2), Agartala (hereinafter referred to "the Tribunal" for short). The case of the Petitioner is that the Respondent No. 1 filed a claim petition before the Tribunal for payment of compensation of Rs. 9,35,000/- for the injuries sustained by him in the vehicular accident which took place on 23.05.1998 at about 13.30 hours. On that fateful day, the Respondent No. 1 boarded the Jeep bearing TR-01 2919 from Agartala to Sonamura and on the way the vehicle was alleged to have lost its control at Madhuban hitting two boys in a motor cycle including the Respondent No. 1 and thereafter dashed against a tree on the road side. Sustaining injuries, the Respondent No. 1 was shifted to G.B. Hospital for treatment and was released from hospital on the same day with an instruction that he should continue treatment from OPD. The Respondent No. 1 claimed to

have consulted private Doctor for which he incurred Rs. 15,000/-. Due to the injuries sustained by him, his right thumb had to be amputated which made him handicapped. The Respondent No. 1 was at that time 51 years old and was carrying on the profession of mason and earned Rs. 4,000/- per month. He had unmarried daughter, son and wife, who were fully dependent upon him for their livelihood. The Respondent No. 1 further claimed that the accident had taken place due to the rash and negligent driving of the Jeep by the driver. The claim was resisted by the owner of the vehicle as well as the Insurance Company. The Insurance Company, i.e., the Petitioner, filed its written statement and alleged that the accident occurred due to the rash and negligent driving of the Jeep as well as the motor cycle and denied that the Petitioner was earning Rs. 4,000/- per month.

3. The Tribunal framed the following issues:

(I) Whether the claimant Petitioner sustained injuries out of vehicular accident due to rash and negligent driving of the vehicle bearing No. TR 01 2919 (Jeep) by its driver on 23.5.98?

(II) Whether the claimant Petitioner is entitled to get any compensation as prayed for. If so, what should be the quantum and which O.P. is liable to pay?

4. After hearing the parties, the Tribunal awarded a compensation of Rs. 2,42,600/- and directed the Petitioner to satisfy the award. The Tribunal recorded the finding that the accident took place as alleged by the Respondent No. 1, which caused injury to him. The Tribunal also recorded the finding that the accident occurred due to the rash and negligent driving of the Jeep and that the Respondent No. 1 became disabled. The Tribunal also held that the Respondent No. 1 was 51 years old at the time of accident and that his monthly income was Rs. 1,800/- per month. Adopting a multiplier of 11, he determined the amount of compensation payable at Rs. 2,37,600/- by observing that this was the amount which he could have earned had he not been handicapped due to the accident. The Tribunal also recorded the finding that the certificate of disablement produced by the Respondent No. 1 proved that his disability was to the extent of 25%, that his right thumb was removed and, as such, a person like the Respondent No. 1 carrying on masonry work could not handle masonry instruments without the aid of the right thumb. This led the Tribunal to come to the conclusion that the loss of earning capacity of the Respondent No. 1 was 100%. The Petitioner did not dispute that the offending vehicle was covered by policy No. 97/6306585 dated 12.1.1998. The Tribunal accordingly held that the Petitioner was liable to indemnify the liability of the owner of the offending vehicle.

5. Aggrieved by the aforesaid judgment and award, the Petitioner filed a review petition before the Tribunal. By the order dated 16.11.2004, the Tribunal rejected the review petition holding that there was no error apparent on the face of the record nor was there any discovery of any new fact or evidence to review the

earlier judgment Aggrieved by this order, the Petitioner approaches this Court by this writ petition.

6. Mr. D.K. Biswas, the learned Counsel for the Insurance Company submits that the Tribunal fell into error in assessing the disability of the Respondent No. 1 to the extent of 100% when the disablement certificate issued by the competent authority assessed the disability to the extent of only 25% and that when the Petitioner lost the fore part of the right thumb above the joint and when the rest of the thumb below the first joint remain intact, such disability is only a nominal one and cannot render the Respondent No. 1 incapable of doing masonry work. He further contends that the Tribunal was required to award a "just compensation" and by determining the disability of the Respondent No. 1 to the extent of 100% loss of earning capacity, he wrongly assessed the amount of compensation payable and awarded unjust compensation, which is not permissible in law. Having failed to exercise its jurisdiction or having exercised its jurisdiction improperly, the award passed by the Tribunal in such circumstances cannot be sustained in law. According to the learned counsel for the Insurance Company, the findings are thus perverse, which warrants the interference of this Court under Article 226 of the Constitution of India. Mr. Somik Deb, the learned Counsel for the Respondent No. 1 raises preliminary objection on the maintainability of the writ petition. He submits that the Petitioner had already persuaded the remedy of review and when the review petition filed by him has already been rejected by the Tribunal, he is barred from invoking the jurisdiction of this Court under Article 226/227 of the Constitution of India. He contends that the circumstance's in which the appeal is barred under the said provision of CPC is akin to the remedy under Article 226/227 of the Constitution of India. Alternatively, he contends that even if the order in the review petition got merged with the judgment and award passed by the Tribunal where Section 173 of the M.V. Act provides remedy by filing an appeal on limited grounds available u/s 149(2), the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution of India. Strongly relying on *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, the learned Counsel submits that this writ petition is not maintainable. He also brings to the notice of this Court the order dated 09.12.2005 passed by the Apex Court in *Milan Rani Saha v. New India Assurance Co. Ltd. and Ors.* in Civil Rule No. 7409 of 2005 arising out of SLP (C) No. 26666 of 2004 (unreported), wherein the Apex Court affirmed the decision in *Sadhana Lodh's* case (supra).

7. I have carefully considered the submissions advanced by the learned Counsel for the Respondent No. 1. To appreciate the points raised by the learned Counsel for the Respondent No. 1, it will be useful to reproduce herein below the observations made by the Apex Court in para 6 and 7 of the decision in *Sadhana Lodh's* case (supra):

Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even if

where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 Code of Civil Procedure. Where remedy for filing a revision before the High Court u/s 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution.

The Supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate Court or a tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

8. It is true that in *Sadhana Lodh's* case (supra), the Apex Court unambiguously held that where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Similarly, the Petitioner is barred from filing an appeal u/s 173 of the M.V. Act, if the grounds of challenge do not fall within the limited grounds available u/s 149(2). But then, when the award passed by the Tribunal suffers from manifest error of law, perversity or jurisdictional error, and the same is brought to the notice of this Court, which is undoubtedly a court of record, can this Court really fold its hands and refuse to hear an insurer against whom grave miscarriage of justice has been caused due to arbitrary exercise of jurisdiction by a Motor Accident Claims Tribunal? Can a Court of record remain a helpless spectator to a victim of judicial impropriety or highhandedness when these acts of commission or omission are manifest and staring on the face of the proceeding?

9. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, the Apex Court has held:

22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by Clauses (2) and (3) of Article 227 with which we are not concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are

to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

In para 25 of the same judgment, the Apex Court further observed:

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been depreciated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

(underline mine)

The circumstances under which the supervisory jurisdiction under Article 226 of the Constitution can be invoked are laid down in paragraph 38(4), (5) and (6) of the same judgment and they are reproduced hereunder:

38 (4). Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is

available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

10. From the paragraphs extracted above, there can be no room for doubt that even though the insurer is barred from filing an appeal u/s 173 of the M.V. Act except on the limited grounds available u/s 149(2) or from filing the writ petition under Article 226/227 of the Constitution, if any infirmity of the nature referred to in the foregoing paragraph 38(4), (5) and (6) are brought to the notice of this Court, its supervisory jurisdiction is capable of being exercised suo motu as well. Manifest error of law or illegal exercise of jurisdiction which occasioned failure of justice cannot be allowed to remain. The Tribunal is called upon to award "just compensation" and not "unjust compensation". The purpose of compensation for the dependants of the victim or the injured in a vehicular accident is that they may not be suddenly deprived of the source of livelihood and as far as possible they may be provided with the means as were available to them before the accidents took place. The compensation should neither be a bonanza nor a source of profit. In *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, the Apex Court, in a claim petition u/s 166 of the M.V. Act, laid down the principles for arriving at just compensation to the legal heirs of the deceased, who died in a motor accident. The Apex Court observed that the compensation to be awarded has two elements: one is the pecuniary loss to the estate of the deceased resulting from the accident, the other is the pecuniary loss sustained by the members of his family for his death. The Apex Court went on to observe as follows:

15. We thought it necessary to reiterate the method of working out "just" compensation because, of late, we have noticed from the awards made by tribunals, and courts that the principle on which the multiplier method was developed had been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be released that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in *Davies*, the loss has to be ascertained by first determining the monthly income of the deceased, then

deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependants of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier. Let us illustrate: X, male, aged about 35 years, dies in an accident. He leaves behind his widow and 3 minor children. His monthly income was Rs. 3500. First deduct the amount spent on X every month. The rough and ready method hitherto adopted where no definite evidence was forthcoming, was to break up the family into units, taking two units for an adult and one unit for a minor. Thus X and his wife make $2+2 = 4$ units and each minor one unit i.e. 3 units in all, totalling 7 units. Thus the share per unit works out to Rs. 3500 (divide) 7 = Rs. 500 per month. It can thus be assumed that Rs. 1000 was spent on X. Since he was a working member some provision for his transport and out-of-pocket expenses has to be estimated. In the present case we estimate the out-of-pocket expense at Rs. 250. Thus the amount spent on the deceased X works out to Rs. 1250 per month leaving a balance of Rs. $3500-1250 =$ Rs. 2250 per month. This amount can be taken as the monthly loss to X's dependants. The annual dependency comes to Rs. $2250 \times 12 =$ Rs. 27,000. This annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependents. Take the appropriate multiplier to be 15. The compensation comes to Rs. $27,000 \times 15 =$ Rs. 4,05,000. To this may be added a conventional amount by way of loss of expectation of life. Earlier this conventional amount was pegged down to Rs. 3000 but now having regard to the fall in the value of the rupees, it can be raised to a figure of not more than Rs. 10,000. Thus the total comes to Rs. $4,05,000 + 10,000 =$ Rs. 4, 15,000.

11. While dealing with the principles for determination of compensation on no-fault basis enshrined in the Second Schedule to the M.V. Act, 1988 (as amended in 1994), otherwise known as "Structured Formula", the Apex Court observed:

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs. 3000. The total should be $3000 \times 15 = 45,000$ but the same is worked out at Rs. 60,000. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9000; the total should have been Rs. 1,44,000 but is shown to be Rs. 1,71,000. To put it briefly, the table abounds in such mistakes. Neither the tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier.

....

12. Now, if the Tribunal, in total deviation of or in utter disregard to the aforesaid principles or structured formula, arbitrarily assessed the amount of compensation payable leading to exorbitant, excessive or disproportionate award, can this

Court really shut its eyes, express its helplessness and refuse to interfere with such an award? In my judgment, it cannot; such inaction or omission would otherwise amount to ignoring the reality and would amount to failure to exercise its supervisory jurisdiction and perpetuation of illegality and gross injustice. For example, if the deceased, a bachelor, dies at the age of 27 years and his dependants are his father and mother, who are 52 and 54 years old respectively. Let us say, the income of the deceased is Rs. 3,000/- per month. Now, if the Tribunal, instead of choosing the multiplier from the age of either of the parents, proceeds to assess the amount of compensation in terms of the structured formula by adopting the multiplier of 18 as per the age of the deceased and award a compensation of Rs. 4,72,000/-, whereas the compensation amount would really be Rs. 2,66,000/- if the multiplier is chosen on the basis of the parents. This will obviously result in overpayment of Rs. 2,06,000/- to the parents thereby occasioning gross injustice to the Insurance Company.

13. Take another instance. If the deceased, a bachelor, dies at the age of 29 years and is survived by his elder brother. Let us again assume that the income of the deceased is Rs. 3,000/- and the age of his elder brother is 50 years. As his legal representative, he files a claim petition u/s 163-A of the M.V. Act. Now, if the Tribunal, without enquiry as to whether the brother is his dependant, proceeds to apply a multiplier of 18 on the basis of the age of the deceased and award a compensation of Rs. 4,72,000/-, whereas the compensation should be Rs. 2,86,000/-, assuming that he is his dependant. Suppose, the brother does not turn out to be the dependant and is, therefore, not entitled to compensation. Will such compensation not amount to a bonanza or a source of profit for the surviving brother? In my opinion, such an instance will be an error manifest and apparent on the face of record and, if not corrected by this Court in a suo motu exercise of its supervisory jurisdiction, will cause grave miscarriage of justice to the Insurance Company. Therefore, where cases of excessive or disproportionate awards resulting from arbitrary or improper exercise of jurisdiction by the Tribunal are brought to the notice of this Court in a writ petition moved by the Insurance Companies or upon information otherwise, though it will not be maintainable as such, still this Court cannot simply fold its hand and return the writ petition on the ground that the quantum of compensation cannot be challenged by them. On the contrary, in such cases, this Court will be justified, indeed, has the duty, to exercise its suo motu supervisory jurisdiction to do justice and, conversely, to undo gross justice committed by the Tribunals.

14. The power of superintendence conferred on the High Court under Article 227 carries with it the duty to keep the subordinate courts within the bounds of their authority and to see that they do what the duty requires and further that they do it in a legal manner. The power can be exercised suo motu in proper cases. Therefore, this Court can interfere if there is an error apparent on the face of the proceeding of a tribunal or subordinate court, which occasioned grave injustice or gross failure of justice. However, a manifest error should be one, which is self-evident, i.e. which can be perceived or demonstrated without involving into any

lengthy or complicated argument or a long drawn process of reasoning. If two inferences are reasonably drawn from a factual situation, and if the Tribunal has chosen to take one view, the error cannot be called gross or patent. One instance in which the High Court exercised its power under Article 227 of the Constitution suo motu is the case of Satyanarayan Nathany and Others Vs. Union of India (UOI), Suffice it to reproduce herein below paragraphs 6 and 7 of the judgment:

6. It is true that there was no application in the alternative in connection with the above appeal for the exercise of such powers but the absence of such application should not, in our opinion, prejudice the party concerned as the constitutional powers under that Article may well be exercised suo motu and do not require any application for the purpose. In this view, we gave time to the learned senior Government Advocate to consider the matter and make his submissions, if any, against the exercise of our powers under Article 227 of the Constitution and the case stood adjourned from June 17, 1970.

7. We have now fully heard Mr. Sengupta on behalf of the State but, as we are satisfied that in the instant case, on a wrong view of law or misconception of the legal position, the learned Arbitrator has refused to exercise a jurisdiction, vested in him by law, and, as, by reason of such non-exercise of jurisdiction, there has apparently been grave or serious prejudice to the subject, we are inclined to exercise our powers under that constitutional provision (Article 227 of the Constitution) in favour of the claimants. The learned Arbitrator was of the view that the claim for terminal compensation, even though it had accrued during the period of requisition, or, to be exact, on the date of de-requisition, namely, November, 12, 1946, was really a right--though an inchoate right--annexed to the ownership of the property, and, accordingly, in view of the subsequent acquisition- of the immovable property in question the same also passed on to the State with the result that the Appellants became disentitled to claim the terminal compensation, even if the said claim could be established on the merits.

15. On a review of the authorities referred to earlier, though I accept the contention of Mr. Somik Deb, the learned Counsel for the Respondent No. 1 that a writ petition is not maintainable by an insurer when it has the right to file an appeal before the High Court on the limited grounds available u/s 149(2), yet I am also of the view that the supervisory jurisdiction under Article 227 of the Constitution is capable of being exercised suo motu to ensure that all Courts and Tribunals act within the bounds of their authorities and do what their duty require and further that they do it in a legal manner. Therefore, in the exercise of their jurisdiction by Courts and Tribunals, if there is an error apparent and manifest on the face of the record, this Court has the power, indeed, the duty, to correct such error, Sadhana Lodh's case (Supra) cannot be an authority for the proposition that the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution cannot step in suo motu to correct an error of law apparent on the face of the record when such instances are brought to its notice. But this suo motu supervisory jurisdiction must be exercised by the High Court only sparingly

and only in exceptional cases. If there are two possible views on a matter, the view of the Tribunal must be upheld. Similarly, any or every illegality in the award of the Tribunal will not call for the interference of this Court unless gross injustice or grave miscarriage of justice resulted therefrom. The aforesaid principles will also be applicable where an error is manifest and apparent from the face of the proceeding of the review petition rejected by the Tribunal.

16. In the instant case, there is no dispute that the right thumb of the Respondent No. 1 was amputated due to the injuries sustained by him in the accident in question. No evidence is led by the Insurance Company to demonstrate that the Respondent No. 1 would be capable of continuing his masonry occupation even after the loss of his right thumb. However, it must be observed in favour of the Insurance Company that the conclusion of the Tribunal that the loss of right thumb of the Respondent No. 1 resulted in the loss of his earning capacity to the extent of 100% is quite debatable. Be that as it may, on the totality of the facts and circumstances of this case, this award of Rs. 2,42,600/- does not appear to be wide off the mark. In other words, the award cannot be branded as grossly excessive or disproportionate so as to warrant suo motu exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution. As pointed out earlier, the suo motu supervisory jurisdiction of this Court cannot be invoked on all and sundry occasions, particularly, when no gross failure of justice is apparent.

17. The net result of the foregoing discussion is that this writ petition is not maintainable. Nor is it a fit case for interference by this Court in exercise of its suo motu supervisory jurisdiction. Consequently, the writ petition is dismissed. However, in the circumstances, I direct the parties to bear their own costs.