
(2007) 04 GAU CK 0010
In the Gauhati High Court

National Insurance Company Ltd.

APPELLANT

Vs

Sati Rani Dey and Others

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) 3 GLT 254

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.B. Saha, J.—This writ petition under Article 227 of the Constitution of India has been filed by the petitioner-National Insurance Co. Ltd., (hereinafter referred to as "Insurance Company") challenging the judgment and award dated 31.3.98 passed by the Motor Accident Claims Tribunal, West Tripura, Agartala in T.S. (MAC) 199 of 1994 whereby and whereunder the learned Tribunal held that the husband of the claimant/respondent No. 1, Sri Sankar Prasad Dey is entitled to get compensation of Rs. 1,60,000/-along with interest @ 12% per annum with effect from 1.9.1994 i.e., the date of filing of the claim petition till payment.

2. Heard Mr. D.R. Choudhury, learned Counsel for the writ petitioner/Insurance Company. Also heard Mr. S. Talapatra, learned senior Counsel assisted by Mr. S.K. Dutta, learned Counsel for the claimant/respondent No. 1 and Mr. S. Chakraborty, learned Counsel for the owner/respondent No. 3.

3. The factual aspects, in a nutshell, required to be decided in the writ petition are as follows:

The husband of the claimant/petitioner/respondent No. 1, Sri Sankar Prasad Dey, aged about 35 years, went out for morning walk on 31.5.04 and while he was walking near "Jahar Bridge" on the extreme left side of Agartala-Udaipur Road at about 6.00 a.m., the offending vehicle bearing No. TRS-709 (bus) allegedly driven at a high speed, rashly and negligently towards Bishalgarh from Battala

side dashed him violently causing severe injuries on his person. Immediately, he was brought to V.M. Hospital and from there, he was taken to GB. Hospital where he had undergone medical treatment as an indoor patient from 31.5.1994 to 17.7.1994 and thereafter as an outdoor patient. He had also undergone treatment under some private doctors. Ultimately, he became permanently disabled and also mentally abnormal due to the said accident.

At the time of accident, Sri Shankar Prasad Dey was a mechanic. He was also the owner of a mechanical shop and was earning around Rs. 4,000/- per month from the said mechanical shop.

In the claim petition, the claimant/wife of the injured claimed compensation against the owner and the insurer of the offending vehicle i.e. the writ petitioner/ Insurance Company for Rs. 23,30,000/-.

The claim of the claimant/respondent No. 1 was objected by the opposite parties/ owner of the offending vehicle as well as by the Insurance Company by filing their written objections. It was averred by the owner that the offending vehicle was insured with the Insurance Company, therefore, the claim of compensation against the owner was liable to be dismissed. On the other hand, it was submitted by the Insurance Company that the Insurance Company was not liable for any loss or damage, if any of the policy conditions was violated by the valid insured during the validity period of the policy.

4. On the basis of the pleadings of the parties, the learned Tribunal framed following issues:

(1) Whether Shri Shankar Prasad Dey was injured or permanently disabled in a motor accident on the Agartala-Udaipur Road near "Jahar Bridge" under West Agartala Police Station on 31.5.1994 at about 6.00 hours?

(2) Whether the said accident was occurred due to rash and negligent driving of the vehicle No. TRS-709 (Bus)?

(3) If so, what should be the amount of compensation?

(4) Who will be liable to pay it?

5. In support of her case, the claimant/respondent No. 1, examined as many as four witnesses and adduced documentary evidence while the opposite party/respondent No. 3 examined one witness and adduced documentary evidence. After hearing the learned Counsel for the parties and on perusal of the evidences on record, the learned Tribunal awarded the aforesaid compensation directing the National Insurance Company to pay the said compensation. Aggrieved, Insurance company filed the instant writ petition.

6. In the present writ petition, the writ petitioner/Insurance Company has mainly assailed the judgment and award of the Tribunal on the ground that the Tribunal failed to take note of the facts that the alleged accident occurred prior to the issuance of the Insurance policy. According to the writ petitioner/Insurance

Company, the alleged accident occurred at 6.00 a.m. on 31.5.1994 and policy was obtained by the owner of the offending vehicle at 11.20 a.m. on the same day. Therefore, as the incident took place prior to the issuance of the policy, the writ petitioner/insurance company is not liable to pay compensation for the accident in question. It is also contended that even if any accident occurred and as a result of the said accident, the husband of the claimant/respondent No. 1 was injured, then also the liability to pay compensation for the alleged accident should be with the owner of the offending vehicle and not with the Insurance Company.

7. It is to be noted here that none of the respondents has challenged the contention of the writ petitioner by filing counter-affidavit.

8. Mr. D.R. Choudhury, learned Counsel for the petitioner relying on the Annex insure-IV to the writ petition submits that the learned Tribunal passed the impugned judgment and award without any application of mind and also failed to consider the evidence on record, particularly the policy wherein the risk date and time were specifically mentioned i.e. 31.5.1994 as risk date and 11.20 a.m. as the time, for which itself the impugned judgment and award is liable to be quashed. He has also argued that the learned Tribunal ought to have considered that in no way the writ petitioner/insurance company had got any liability to make payment of compensation in connection with the alleged accident as the vehicle was not insured at the relevant time of accident. In support of his contention, he cited a decision of the Apex Court in the case of National Insurance Co. Ltd. v. Challa Bharathamma reported in AIR 2004 SC 4882, particularly para 13 of the said report. As confronted by this Court, Mr. Choudhury relying upon the decision of the Apex Court in the case of Oriental Insurance Co. Ltd. v. Sunita Rathi reported in AIR 1998 SC 257 also submits that this Court has the power to consider the prayer of the writ petitioner in exercise of its writ jurisdiction as the impugned judgment and award was secured by the claimant/respondent No. 1 on the basis of the policy obtained by the owner of the offending vehicle/respondent No. 3 herein, by way of fraud.

9. In response to the submissions of Mr. Choudhury, Mr. S. Chakraborty, learned Counsel appearing for the respondent No. 3 submits that the learned Tribunal's judgment and award is fully based on evidence and there is no wrong or illegality for which this Court can interfere with the judgment and award. Mr. Chakraborty further submits that Annexure-IV to the writ petition is not the insurance policy i.e. only the proposal form which was not placed before the learned Tribunal by none of the parties including the writ petitioner/insurance company. Hence this Court cannot take any notice of the said proposal form as this Court is exercising its writ jurisdiction, not the appellate jurisdiction. He also submits that insurance policy was exhibited by the respondent No. 3/owner of the offending vehicle, which was marked as Exhibit-"A". After issuance of insurance policy, the risk date and time mentioned in the proposal form (Annexure-IV to the writ petition) cannot be taken into consideration as the policy is covering the field and the

insured is governed by the conditions of the policy and not by the entry in the proposal form. He has placed the original insurance policy as well as the money receipt and contended that the premium money for obtaining the insurance policy was handed over by the respondent/owner of the vehicle to the Agent of the writ petitioner/insurance company namely Sri A.C. Das before the day of the accident. As such, according to him, the offending vehicle is fully covered by the insurance policy which was placed before the learned Tribunal and the learned Tribunal marked the same as Exhibit "A".

10. Mr. S. Talapatra, learned senior Counsel for the claimant/respondent No. 1 submits that the contention of the learned Counsel for the writ petitioner/Insurance company has no force in the eye of law as because this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution has no power to re-appreciate the evidence recorded by the learned Tribunal and is to be confined only to see whether the Tribunal has proceeded within its parameters and it cannot correct the error apparent on the face of the record, much less of an error of law and also cannot act as an appellate court or the Tribunal. He further submits that the present writ petition filed by the insurance company is not maintainable as because the same is filed to enlarge the scope enumerated for appeal by the statute. In support of his contention, he relies upon a decision of the Apex Court rendered in the case of *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, . Regarding the contention of Mr. Choudhury, learned Counsel for the writ petitioner/Insurance company to the effect that since the accident was occurred prior to obtaining the insurance policy, the writ petitioner/insurance company is not liable to pay the awarded compensation to the claimant/respondent No. 1, Mr. Talapatra submits that the aforesaid contention is contrary to the decision of the Apex Court in the case of *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*,

11. This Court has given anxious thought to the judgment and award passed by the learned Tribunal. The learned Tribunal has come to the conclusion that at the relevant period of accident, the vehicle was insured with the National Insurance Company as because the claimant has proved the insurance policy in question, which was marked as Exhibit-A. It also appears from the record that the document, particularly Annexure-4 to the writ petition, which is relied by the writ petitioner as insurance policy is not at all a policy but a proposal form of the policy which was not placed before the learned Tribunal and the policy has also not been annexed with the petition by the writ petitioner.

12. After going through the decision in the case of *National Insurance Co. Ltd. (supra)*, this Court is of the considered view that the said decision has no application in the present case as because the facts and circumstances of that case is totally different than the case in hand. In the said case, the offending vehicle was plied without valid permit and considering the said facts and circumstances, the Apex Court held that it would be proper for the insurer to satisfy the award, though in law the insurer was not liable to satisfy the same as

because the vehicle was plied contrary to the terms and conditions of the policy. But in the case in hand, there was no plea before the learned Tribunal by the writ petitioner/Insurance company that the insured plied the vehicle contrary to the terms and conditions mentioned in the policy and the policy (Exhibit-A) did not cover the time and date of the accident. It was also not pleaded and submitted before the Tribunal by the petitioner/insurance company that the Insurance policy in question was obtained after the accident by the owner of the offending vehicle/the respondent No. 3 by way of fraud. The tribunal did not decide the matter on that aspect, rather held that the insurer is liable to pay compensation as because the offending vehicle was insured at the relevant date and time of accident, though raised the aforesaid point before this Court. In the case of the Oriental Insurance Co. Ltd. (supra), the Apex Court held that if the policy was obtained after the accident then the Insurer would not be liable to pay compensation. In the policy involved in that case it was clearly mentioned the date and time from which the said policy was effective and plea of fraud so far obtaining the policy was present in that case which is totally absent in the case in hand. In that case, the policy was not disputed. The dispute was regarding the date and time of effect of the policy in this case that is also missing. Mr. Chakraborty, learned Counsel for the claimant placing reliance on the original insurance policy and money receipt rightly submits that money was handed over to the agent namely A.C. Das which is evident from policy (Exhibit "A"). Hence, even if in the proposal from time is mentioned after the time of accident then also the liability is with the insurer as because the "Agent" was acted on behalf of the Insurance Company/writ petitioner. In United India Insurance Co. Ltd. (supra), the Apex Court observed that the High Court ought to exercise its writ jurisdiction in a case where the award secured are the by-products of stark fraud played on a Tribunal. Herein in the instant case, it is noticed that no such plea for fraud was taken by the Insurance Company before the learned Tribunal to the effect that policy was obtained by the owner of the offending vehicle by way of fraud and relying on the said policy, the owner of the offending vehicle tries to discharge its liability and help the claimant to get the compensation illegally from the petitioner.

13. There is no quarrel regarding proposition laid down by the Apex Court in the case of Oriental Insurance Company (supra), but the ratio of the case cannot be helpful for the present petitioner as because the point regarding the date and time of risk was not taken by the insurance company before the learned Tribunal. Rather before the Tribunal, the insurance company accepted the contention of the owner of the offending vehicle to the effect that the date and time of the accident is covered by the insurance policy (Exhibit-"A"). In the case of Sadhana Lodh (supra), the Apex Court in paragraph-7 held thus:

7. 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 the 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.

The decision of the Apex Court in the case of *Sadhana Lodh* (supra) was subsequently followed by the Apex Court in the case of *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, . In *Bijoy Kumar Dugar* (supra), the Apex Court held that the right of appeal is statutory right to the parties and where the law provides a remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available to challenge the award. In the instant case, the writ petitioner/insurance company by filing the present writ petition tries to enlarge the grounds limited for appeal as well as to make a new case which was not made out before the learned Tribunal and also in support of its contention in the written statement, no witness was examined. The writ court is not in a position to reappreciate the evidence.

14. After due weighed to the submissions of the learned Counsel for the parties as well as the law reports of the Apex Court afforecited and the findings given by the learned Tribunal, this Court is of the considered opinion that no error is committed by the learned Tribunal on deciding the issues in favour of the claimant/respondent No. 1 on the factual aspects as pleaded before it. Hence it would not be proper for this Court to exercise its jurisdiction vested on it under Article 227 of the Constitution for allowing the petitioner to raise a new plea and reappreciate the evidence for setting aside the judgment and award impugned.

15. In the result, the writ petition stands dismissed. No order as to costs.