**(2009) 10 GAU CK 0026**

**In the Gauhati High Court**

**Case No :** C.R.P. No. 11 of 2009

National Insurance Company, Ltd. — APPELLANT

Vs

Shi Subrata Kanti Roy — RESPONDENT

**Date of Decision :** 26-10-2009

**Acts Referred:**

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 132, 161, 174, 184, 197
Tripura Land Revenue and Land Reforms Act, 1960 — Section 62
Tripura Land Revenue and Land Reforms Rules, 1961 — Rule 100, 101, 103, 106, 109

**Citation :** (2009) 2 GLD 801 : (2011) 2 GLR 505 : (2010) 1 GLT 372

**Hon'ble Judges :** H.N. Sharma, J

**Bench :** Single Bench

**Advocate :** A. Lodh, for the Appellant; M. P.K. Dhar, for the Respondent

## Judgement

H.N. Sarma, J.—The application is filed by the petitioner under Article 227 of the Constitution of India for setting aside the order dated 16.11.2007 passed by the learned Member of the Motor Accident Clams Tribunal, West Tripura, Agartala, Court No. 2 as well as the orders dated 4.1.2008 and 3.2.2009 passed in Certificate Proceeding being No. 3/MACT/8 by the Certificate Officer, SDM''s Office, Sadar, Agartala.

2. Heard Mr. A. Lodh, learned Counsel appearing for the petitioner as well as Mr. P.K. Dhar, learned Counsel appearing for the respondent,

3. The facts necessary for disposal of this petition may be summarised as follows:

The respondent instituted Title Suit (MAC) No. 299 of 1995 before the Motor Accident Claims Tribunal, West Tripura, Agartala, Court No. 2 alleging inter-alia that on 25.3.1995 while he was awaiting for a bus in the left side of Agartala-Bishalgarh road at Badharghat, at that time, a jeep bearing No. TR-01-2015 coming from the southern side in negligent manner, dashed him and, as a result of which he suffered injuries. On account of such injuries sustained by him, he filed the aforesaid claim case praying for compensation amounting to Rs.

 

6,00,000/- (rupees six lakhs). The learned Tribunal, upon hearing the parties, finally disposed the claim case on 14.11.2002 awarding a sum of Rs. 92,500/- (Rupees ninety two thousand five hundred) to the claimant as compensation within two months with interest @ 9% per annum w.e.f. 22.9.1995 i.e. from the date of filing of the claim petition with further order that if the respondent Insurance Company (the petitioner herein) fails to comply with the direction to satisfy the award within two months, the interest would be 12% per annum after expiry of two months.

4. The respondent, thereafter raised an objection before the learned Tribunal about the non-satisfaction of the award which was passed by the Tribunal vide Order dated 9.8.2006. The learned Tribunal passed an order issue certificate u/s 174 of the Motor Vehicle Act for realisation of the awarded sum in accordance with law. On the basis of the said certificate, certificate proceeding being No. 03/ MACT/08 was registered by the Certificate Officer, SDM''s Office, Sadar, Agartala and issued Notice of Demand u/s 62 of the Land Revenue and Land Reforms Act, 1960 (43 of 1960). Accordingly, the Notice dated 4.1.2008 as per Rule in Form No. 24 under Rule 89(1) was issued to the petitioner asking the petitioner to submit objection, if any, within 15 days. The petitioner contends that before issuance of the aforesaid certificate by the Certificate Officer, the award was satisfied by paying a sum of Rs. 1,40,000/- (rupees one lakh forty thousand) to the petitioner out of which Rs. 47,500/- (rupees forty seven thousand five hundred) was paid as interest on lump sum basis and the claimant had duly accepted the said amount.

5. In view of the aforesaid satisfaction of the award, it is contended by Mr. A. Lodh, learned Counsel appearing for the petitioner that the impugned orders passed by the Certificate Officer is not liable to be sustained and no liability can be fastened. The further contention of the learned Counsel is that by filing an application in terms of the order passed by the Certificate Officer, the Divisional Manager of the petitioner-company submitted written objection on behalf of the certificate debtor intimating the fact of satisfaction of the award. While the matter was pending at that stage, the present petition is filed by the Certificate Debtor questioning/challenging the said impugned orders as well as the Certificate Proceeding itself pending before the Certificate Officer. Mr. P.K. Dhar, learned Counsel appearing for the respondent contends that the award of the Tribunal has not been satisfied in full, the claimant-respondent approached before the Tribunal for issuance of Certificate u/s 174 of the Motor Vehicle Act. The Tribunal, after issuing notice upon the present petitioner passed an order to issue certificate on 16.11.2007 for realizing the amount as arrears of land revenue. Learned Counsel further submits that the respondent is entitled to get the amount mentioned in the certificate and, accordingly, the proceeding has been rightly initiated by the authority.

Submissions of the learned Counsels received due attention of the Court. Under the scheme of the Motor Vehicle Act, 1988, there is no specific provision for recovery of money awarded by a Tribunal as compensation for death or injury in a vehicular accident. However, Section 174 of the Act provides that for recovery of any amount due from any person under an award, the claim Tribunal may order to issue a certificate to the District Collector for realisation of the due amount and the Collector, upon receipt of such certificate is to proceed to recover the same in the same manner as an arrear of land revenue. For the sake of convenience, Section 174 of the Motor Vehicles Act, 1988 is quoted below:

174. Recovery of money from insurer as arrear of land revenue.-Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

6. The Tripura Land Revenue and Land Reforms Act, 1960 (Act 43 of 1960) (hereinafter referred as ''the Act'') was enacted by the State Government to consolidate and amend the law relating to land revenue in the State of Tripura and to provide for the acquisition of estates and for certain other measures of land reforms. Chapter VII of the Act provides for realisation of land revenue and other public demands, ranging from Section 59 to Section 80. Section 62 of the Act specifically provides the mode of recovery of an arrear of land revenue in respect of any land. Section 80 of the Act provides the methodology for recovery of sum of money, which is recoverable under this Act in the same manner as an arrear of land revenue. Section 80 of the Act is reproduced herein below:

80. The following moneys may be recovered under this Act in the same manner as an arrear of land revenue, namely:

(a) rent, fees and royalties due to the Government for use or occupation of land or water or any product of land;

(b) all moneys falling due to the Government under any grant, lease or contract which provides that they shall be recoverable as arrears of land revenue;

(c) all sums declared by this Act or any other law for the time being in force to be recoverable as an arrear of land revenue.

In exercise of the powers conferred by Sections 98, 132, 161, 184 and 197 of the Act, a set of rules known as the "Tripura Land Revenue and Land Reforms Rules, 1961" has been framed. Chapter VII of the said rule lays down the provisions for realisation of land revenue and other public demands. Rule 88 to Rule 110 relates to the procedure for realisation of land revenue in respect of any land. Rule 111 further provides of the procedure for recovery of other amounts recoverable as arrears of land revenue. For our ready reference Rule 111 is quoted herein below:

Rule 111.

(1) Where any amounts are to be recovered as an arrear of land revenue, the

 

authority having jurisdiction to recover the amount shall send a request to the Collector with the following particulars:

(a) the authority to whom and the account on which the sum is due;

(b) the person from whom the sum is due;

(c) the sum due;

(d) the provision of law under which the sum is recoverable as an arrear of land revenue;

(d) the process by which such sum may be recovered; and

(f) the property against which the process may be executed.

(2) On receipt of the application, the Collector shall proceed to recover the amount like arrear of land revenue due from person mentioned in the request

As can be seen from Sub Rule (2) of Rule 111, on receipt of an application to that affect, the Collector is to proceed to recover the amount like arrear of land revenue due from the person mentioned in the request.

The notice of demand under Rule 89(1) specifically provides for realisation of an arrear of land revenue.

7. From the perusal of the aforesaid provisions of law it is thus apparent that a Certificate Proceeding instituted for the purpose of realisation of the sum as regard to land revenue is not the same and identical as that of recovery of a sum as arrears of land revenue. The former is covered under the provisions of Section 62 of the Act whereas the other one is covered under the provisions of Section 80 read with Section 111 of the Rules.

In the event of receipt of any such application for realisation of any sum by the District Collectorate recoverable in the manner as arrear of land revenue on the basis of certificate that might be issued by the competent authority, the same is to be registered u/s 80 of the Act and not u/s 62 of the Act.

8. The petitioner, by filing objection dated 11.2.2009, has asserted that the award in question has been duly satisfied by paying the sum to the respondent who had duly accepted the same. Upon perusal of the provisions of the Act, it is found that no other specific power is entrusted to the Certificate Officer, except execution of the certificate. However, u/s 81(2) of the Act the inherent power of the revenue officer has not been restricted or limited any manner, which requires to be exercised for the ends of justice and to prevent the abuse of the process of the revenue Court.

9. In such a situation, I am of the considered opinion that when it comes to the notice of the Certificate Officer about the non-executability of the certificate so issued by an authority for any reason, it would be his duty to refer the matter back to the concerned authority who issued the certificate for necessary

 

modification/cancellation/alteration as the case may be.

10. In the instant case, facts as described hereinabove reveals that the award on the basis of which the certificate in question is issued has already been satisfied by the petitioner-insurance company. The said fact, has however, been disputed by the respondent and this occasions a necessity for decision of this fact by appropriate authority. If the Certificate Officer finds that the award has been satisfied by the petitioner upon proper appropriation of the necessary facts, the Certificate Officer is directed to refer back the matter to the Motor Accident Claims Tribunal for necessary re-verification stating about the in-executability in the present form.

11. In view of the aforesaid discussions, the matter is remanded back to the Certificate Officer for deciding the matter in the manner as directed above. It is made clear that without deciding the matter in the manner in the light of the observation and direction made hereinabove, the certificate in question shall not be executed by the authority. Both the parties are directed to appear before the Certificate Officer on 9.11.2009.

The revision petition is disposed of with the aforesaid direction.