

(2006) 03 GAU CK 0020
In the Gauhati High Court

National Insurance Company Ltd.

APPELLANT

Vs

Subir Das and Another

RESPONDENT

Date of Decision : 17-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : (2007) 2 GLR 652 : (2006) GLT 821 Supp

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—This writ petition under Article 227 of the Constitution of India is directed against the judgment and award dated 2.8.2001 passed by the Motor Accident Claims Tribunal, West Tripura, Agartala (Court No. 2) in T.S. (MAC) 22 of 1997 awarding a compensation of Rs. 5,07,000 with interest @ 9% per annum from the date of filing the claim petition in favour of the respondent No. 1. The award further directed therein that if the compensation with the accrued interest was not paid within two months, the interest should be paid 12% per annum.

2. Heard Mr. A. Lodh, learned Counsel for the petitioner and Mr. A.K. Bhowmik, learned senior counsel for the respondent No. 1.

3. At the outset, Mr. A.K. Bhowmik, learned senior counsel for the respondent No. 1 raised a preliminary objection on the maintainability of the writ petition following the decision of the Apex Court in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, by submitting that when the petitioner is barred from challenging the quantum of compensation by way of appeal, it cannot either file this writ petition. Elaborating his contention, he further submits that when a statutory right to file an appeal on limited grounds is provided for under the provisions of the Motor Vehicles Act, it is not open to the High Court to entertain a petition under Article 227 of the Constitution nor can such jurisdiction be exercised in the "cloak of an appeal in disguise". That being the settled legal

position, according to the learned senior counsel, this writ petition is not maintainable and is liable to be dismissed at the very threshold. On the other hand, the learned Counsel for the petitioner contends that the impugned judgment suffers from an error manifest on the face of the record and being based on no evidence, this Court is duty bound to interfere therewith.

4. It is true that in *Sadhana Lodh's* case (*supra*), the Apex Court has held that when a statutory right to file an appeal has been provided for, it is not open to a High Court to entertain a petition under Article 227 of the Constitution and that where remedy for filing a revision before the High Court u/s 115 CPC has been expressly barred by the 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 Apex Court further held therein that the supervisory jurisdiction conferred on the High Court 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, an error of law. The Apex Court also held that in exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate Court or a Tribunal and that 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 the tribunal purports to have passed the order or to correct the errors of law in the decision. It is, thus, obvious that a writ petition under Article 227 of the Constitution cannot be entertained by High Court if the remedy of appeal, even though on limited ground, is provided for by a statute. However, this does not and cannot mean that this Court cannot exercise its supervisory jurisdiction under Article 227 of the Constitution *suo moto*, if it comes to its notice in a writ petition filed by an aggrieved person or otherwise that the Tribunal, in total deviation of or in utter disregard of the well settled principles or the structured formula prescribed by the MV Act for determination of just compensation, has arbitrarily assessed the compensation payable leading to an exorbitant award or made an award where none is called for.

5. It is against the backdrop of the aforesaid principle that I propose to examine this writ petition. The material facts of this case are that on 17.10.1996 at about 6.30 PM while the respondent No. 1 was waiting for a bus on Assam Agartala Road at Dalura, a truck bearing No. TRL 1319 hit him due to the rash and negligent driving of the vehicle by the driver and when he attempted to jump outside the road to save his life, his left leg was crushed by the front portion of the left side of the vehicle. He was immediately taken to the G.B. Hospital by the passers by and was admitted therein. As a result of the injury, gangrene was formed on his leg, which resulted in amputation of his leg at Avenue Nursing Home in Calcutta. He returned to Agartala on 4.12.1996. According to the respondent No. 1, he spent Rs. 60,000 for medicine, conveyance, etc. The respondent No. 1 claimed that he was 22 years old at the time of accident and earned a sum of Rs. 3,000 per month from the business of supply of cocks, hens,

goats, pigs, etc., to different restaurants and markets at Agartala. The respondent No. 1 further claimed that he was supporting a family comprising of six members from the income he so earned. Having become the permanent disabled due to the accident, he filed the claim petition claiming a compensation of Rs. 21,18,000 from the owner of the vehicle and the writ petitioner. The claim petition was contested by the owner of the vehicle and its driver as well as the writ petitioner by filing their respective written statements. After hearing the parties, the Tribunal awarded the said compensation.

6. Mr. A. Lodh, learned Counsel for the petitioner contends that the determination of the Tribunal that the income of the respondent No. 1 was Rs. 2,500 per month is perverse and based on no evidence and that when the respondent No. 1 could not prove his income with adequate evidence, the Tribunal ought to have adopted the notional income of Rs. 15,000 per annum as envisaged in the Second Schedule to the Motor Vehicles Act. In other words, the contention of the learned Counsel for the petitioner is that the findings of the Tribunal on the income of the respondent No. 1 is speculative and guess work, which is not permissible in law. On the other hand, Mr. A.K. Bhowmik, learned senior counsel for the respondent No. 1 supports the findings of the Tribunal and submits that no interference is called for.

7. It is the case of the respondent No. 1 that he used to sell meat in the market by collecting animals from different villages and earned Rs. 3,500 to Rs. 4,000 per month and that after the accident his income was reduced to Rs. 150 per month by preparing bidi. The Tribunal recorded the findings that the income certificate of the respondent No. 1 issued by the Member of Ranirbazar Nagarpanchayet showing his monthly income from 1993-96 at Rs. 3,500 per month did not disclose the source of the income and that the certificate was also not issued by a competent authority. Disbelieving the income of the respondent No. 1 to be Rs. 3,500 per month on the basis of such dubious certificate, the Tribunal apparently determined that his income was Rs. 2,500 per month. This finding has been assailed by the petitioner as perverse.

8. At the very outset, it may be noted that the findings of the Tribunal that the percentage of disability of the claimant-respondent was to the extent of 40% due to amputation of his leg while he sustained loss of earning capacity to the extent of 70%; that he was 23 years old at the time of the accident, are not disputed in this writ petition. Consequently, these findings have attained finality. As regards the finding of the Tribunal on the income of the respondent claimant, the submission of the learned Counsel for the petitioner is that once the Tribunal rightly held that the income certificate showing his monthly income as Rs. 3,500 could not be relied upon, it ought to have taken resort to the notional income of Rs. 15,000 per annum as envisaged in the Second Schedule to the MV Act, 1988, and assessed the compensation in accordance with such income and should not have determined the income by speculation and guesswork. By determining the income of the claimant respondent at Rs. 2,500 per month without any evidence,

according to the learned Counsel, the Tribunal has committed perversity, which is liable to be interfered with by this writ court.

9. I have gone through the pleadings of the parties as well as the depositions of the witnesses. It will be interesting to note that the petitioner-Insurance Company never denied or challenged the statement of the claimant-respondent that he was carrying on the business of supplying poultry items and live-stock such as goats, pigs, etc. to restaurants. When the nature of business carried on by the claimant-respondent prior to the accident remains undisputed by the petitioner-Insurance Company, in my opinion, the Tribunal could not be wide of the mark in holding that his monthly income was Rs. 2,500 per month. Anyway, that the claimant-respondent would be earning approximately Rs. 84 for such business in 1996 is a possible view, and cannot be an irrational view calling for the interference of this Court in exercise of the power of judicial review. In deciding the quantum of compensation to be paid to a person for the personal injury suffered by him, the court is bound to ascertain all considerations which will make good to the injured, as far as money can do, the loss which he has suffered as a natural consequence of the wrong done to him. Thus, the injured has to be compensated (1) for pain and suffering; (2) for loss of amenities; (3) shortened expectation of life, if any; (4) loss of earning or loss of earning capacity or in some case, for both; and (5) medical treatment and other special damages.

10. In the instant case, the Tribunal did not assess the compensation amount payable in accordance with the well established heads of damages in personal injury cases. Nevertheless, even if the compensation were assessed by him under the aforesaid well-known heads of damages, in my judgment, there will not be any substantial difference in the compensation ultimately payable. It may be reiterated that compensation is to be assessed by some guesswork, hypothetical considerations and some amount of sympathy linked with the nature of disability caused which is required to be observed with objective standards. The disability sustained by the claimant-respondent following amputation of his leg can neither be restored to its original position nor can such disability be compensated for in terms of money. The claimant-respondent, at a very young age, has been subjected to grievous injuries which made him permanently physically disabled, which he will have to bear for the rest of his life. Due to such physical" disablement, the claimant-respondent would suffer frustration, disappointment, discomfort, inconvenience, inferiority complex, loss of marriage prospects, etc. He should be adequately compensated for and, to the extent possible, in monetary terms. In my view, the findings of Tribunal does not suffer from such of the gross jurisdictional errors or infirmities contemplated by law for suo moto exercise of the supervisory jurisdiction of this Court available under Article 227 of the Constitution. Nor is the compensation amount awarded, on the basis of such findings, excessive, disproportionate or exorbitant.

11. The net result of the foregoing discussion is that this writ petition is devoid of

substance and is liable to be dismissed. However, I am constrained to observe that the interest on default imposed in the impugned judgment and award is not only on the high side considering the prevailing interest rates of the commercial banks but is also not sanctioned by statute. Consequently, the interest rate so awarded shall stand reduced to 9% per annum, which shall be payable with effect from the date of the claim petition. Subject to the aforesaid modification, the writ petition is dismissed by directing the parties to bear their own costs. Needless to say, any amount already deposited or paid to the claimant-respondent shall be adjusted accordingly.