(2019) 03 J&K CK 0098

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 410 Of 2010

New India Assurance Co. Ltd APPELLANT

Vs

Jagir Singh & Ors RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 03 J&K CK 0098

Hon'ble Judges : Dhiraj Singh Thakur, J;Sindhu Sharma, J

Bench : Division Bench

Advocate : Rupinder Singh, L. K. Sharma, Mohit Kumar

Final Decision : Dismissed

Judgement

1. This is a petition challenging the order dated 23.12.2009 passed by the State Consumer Disputes Redressal Commission, Jammu (hereinafter called ?the State Commission") whereby the appeal filed by the Insurance Company/petitioner herein has been dismissed.

2. Briefly stated, the material facts are as under:-

"Respondent/complainant purchased a new Tata Indica Car from the Show Room which was got insured with the petitioner/Company w.e.f. 21.02.2003 to 20.02.2004 for an amount of Rs.3,64,642/-. On 01.06.2003, the said vehicle met with an accident in Punjab in which three occupants of the Car died while four suffered grievous injuries and the car suffered extensive damage. Insurance Company deputed a Surveyor to assess the loss who prepared an estimate. The claimant also got prepared an estimate to the tune of Rs.3,28,566.24 from ANKE Automobiles Jammu which was also furnished to the Surveyor and Loss Assessor namely Arun Kumar and Company. Based upon the estimated loss, the Surveyor assessed the loss at only Rs.1,86,049/-. It appears that the claimant also got the estimate of loss prepared through National Garage, Jammu which was the authorized dealer for Tata Vehicles at Rs.3,30,921/-."

3. Claimant also appears to have got an estimate prepared from Dada Motors Limited Ludhiana by physically taking the wreckage in a Tata 207 vehicle thereby spending an additional amount of Rs.6,600/-as carriage charges. Dada Motors, on verification, prepared an estimate of Rs.3,82,806/-. Since the Insurance Company did not pay any amount as per the loss estimated by the aforementioned three authorized dealers/Workshop owners of Tata Vehicles, the claimant preferred a claim petition before the Divisional Forum at Jammu. The Divisional Forum vide judgment and award dated 12.02.2007 directed the Insurance Company to pay an amount of Rs.3,64,642/- to the complainant alongwith interest at the rate of 6% per annum from December, 2003 i.e., three months after the date of Surveyors report till its realization and an additional amount of Rs.2,000/- was awarded as litigation charges.

4. Needles to say that the Divisional Forum had taken into consideration the evidence on record which included, Satish Kumar Raina, Works Manager of Tata National Garage, Jammu as also Birbal Raina, Works Manager ANKE Automobiles Kalu Chak Jammu. Both these witnesses had deposed that they had prepared the repair estimates and further stated that the repairs could not be done for the reason that the cost for the repairs exceeded 80% of the total cost of the vehicle and, as such, the repair was not economical. It was also stated that despite the repairs, the vehicle perhaps would have not become road worthy and therefore, was a total loss. The Divisional Forum keeping in view the evidence on record accepted the evidence with regard to the vehicle being a total loss and unviable for repairs and being declared not road worthy.

5. In appeal, preferred by the petitioner/Company before the State Commission, the award was modified to a limited extent that an amount of Rs.4,000/- was deducted, out of the amount determined as payable by the Divisional Forum on account of the fact that between the date of insurance and the date of occurrence, a period of four months had expired. Reliance in this regard was placed upon the Apex Court judgment in case titled Dharmendra Goel vs Oriental Insurance Company Ltd., '2008 ACJ 2621";.

6. Counsel for the petitioner stated that the view expressed by the Fora below was not tenable in law and was even otherwise contrary to the evidence on record. It was urged that the Divisional Forum as also the State Commission had fallen in error in believing that the estimate of Rs.3,28,000/- had been prepared by the Loss Assessor deputed by the Insurance Company. It was further stated that once the Loss Assessor had certified the loss admissible at only Rs.1,86,049/-, no contrary evidence ordinarily could have been relied upon for the purpose of contradicting such evidence.

7. Learned Senior Counsel appearing on behalf of respondent No.1, Sh. L. K. Sharma, on the other hand, reiterates the stand which was taken by the complainant before the Fora below. It was stated that the report of the loss assessed by the Loss Assessor cannot be said to be sacrosanct. Reliance in this regard was also placed upon the Apex Court judgment in New India Assurance

Company Limited Versus Pradeep Kumar '2009 (7) SCC 787' . It would be beneficial to refer Paragraph-15 of the said judgment:-

"15. The object of the aforesaid provision is that where the claim in respect of loss required to be paid by the insurer is Rs.20,000/- or more, the loss must first be assessed by an approved surveyor (or loss assessor) before it is admitted for payment or settlement by the insurer. Proviso appended thereto, however, makes it clear that insurer may settle the claim for the loss suffered by insured at any amount or pay to the insured any amount different from the amount assessed by the approved surveyor (or loss assessor). In other words although the assessment of loss by the approved surveyor is a pre-requisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured.'

8. In the aforementioned judgment, the Apex Court has clearly held that although the assessment of loss by the approved surveyor is a pre-requisite for payment or settlement of claim, yet the report is not so sacrosanct that it cannot be departed from.

9. Heard learned counsel for the parties.

10. Admittedly, the vehicle in question was almost a brand new vehicle which had plied only for four-five months before the same met with an accident. It is also admitted that three people had died in the accident which only reflects the severity of the impact which the vehicle would have suffered. From the estimate reports prepared by the authorized dealers, it appears that the Car had suffered extensive damage, almost to all its parts and also required installation of new body shell on the said vehicle. Major components of the vehicle are also reported to have suffered damage. There is an ample evidence on record as has been referred to by the State Commission as also the Divisional Forum, that the vehicle had suffered total loss and that even if the vehicle was repaired, its road worthiness would remain doubtful.

11. Statement of the experts/witnesses produced by the claimant, one of whom was an Auto Mobile Engineer and the other a Works Manager cannot be disbelieved in that regard. There is no evidence produced in rebuttal by the Insurance Company to suggest that the vehicle even after repair would become road worthy. It would be anybody"s concern to see that the vehicle, which suffered three deaths in an accident, is not put to use in a state which cannot be plied safely, considering that the extensive repairs even, according to the Insurance Company, were warranted on the same. The Divisional Forum, thus, has taken a view based upon the evidence which has been upheld even by the State Commission, although with a slight modification.

12. The scope of writ jurisdiction under Article 226 of the Constitution of India is no longer res integra. In Appropriate Authority & anr vs. Sudha Patil (Smt) and anr, (1998)8 SCC 237, the Apex Court in para 6 held thus:

"So far as the first question is concerned, the parameters for exercise of supervisory jurisdiction of the High Court under Article 226 of the Constitution, white examining the decision of an inferior tribunal, has no connection with the question whether an appeal is provided for against the sard order of the tribunal under the statute in question. As has been held in several decisions of this Court, the power being supervisory in nature in exercise of such power, a finding/ conclusion of an inferior tribunal can be interfered with if the High Court comes to the conclusion that in arriving at the conclusion the tribunal has failed to consider some relevant materials or has considered some extraneous and irrelevant materials or that the finding is based on no evidence or the finding is such that no reasonable man can come to such a conclusion on the basis of which the finding has been arrived at. This being the settled position, it is difficult to sustain a plea that when the order of the tribunal does not provide for an appeal, the High Court can get its Jurisdiction enlarged and exercise an appellate power while examining the correctness of the conclusion arrived at by such tribunal..........."

13. Similar view has been taken by the Apex Court in Union of India & ors vs. Shatabadi Trading and Investment Pvt. Ltd. and ors, (2001) 6 SCC 748. The Apex Court in para 5 in the said judgment held thus:

"....It is trite to say that the proceedings arising under Article 226 of the Constitution are in the nature of judicial review and such review could be only in respect of the process of decision and not the decision itself......."

14. Again in State of Andhra Pradesh vs. P.V. Hanumantha Rao (Dead) through L.Rs & anr, (2003) 10 SCC 121, the Apex Court in para 30 held thus:

"30. True it is that remedy of writ petition available in the High Court is not against the 'decision' of the subordinate court, tribunal or authority but it is against the 'decision making process'. In the 'decision making process', if the court tribunal or authority deciding the case, has ignored , vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction", the constitutional power of the High Court under Articles 26 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining."

15. In para 33 of the judgment in the Hanumantha Rao"s case, the Apex Court further held thus:

"33.No doubt, it was held that neither in exercise of power of writ under Article 226 nor in supervisory jurisdiction under Article 227, the High Court will convert itself into a court of appeal and indulge in the re- appreciation or evaluation of evidence. The power of the High Court in writ jurisdiction to interfere where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied has been recognised even in the case of Swarn Singh & Anr. (supra) on which strong reliance was placed on behalf of the State. The relevant observations are :

In regard to a finding of fact recorded by an inferior tribunal, a writ of Certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law.

16. In the present case, both the Fora Below have taken a view based upon the evidence on record. We do not find any perversity in the manner in which, the Fora below had arrived at the conclusion, much less do we find any infirmity or perversity in the conclusion arrived at. Be that as it may, this petition is found to be without any merit and is, accordingly, dismissed.

