
(2005) 06 GAU CK 0051
In the Gauhati High Court
Case No : Writ Petition (C) No. 47 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

Lalnghilhlovi and Another

RESPONDENT

Date of Decision : 09-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149(2), 163A, 170

Citation : (2006) 2 ACC 501 : (2006) ACJ 1847

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : George Raju and Ricky Gurung, for the Appellant; H. Lalrinthanga, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—Heard Mr. George Raju, learned Counsel for the petitioner, New India Assurance Co. Ltd. None has appeared for claimant-respondent No. 1.

2. By this present writ petition, the insurance company seeking to invoke the jurisdiction of this Court under Article 227 of the Constitution of India, challenging the judgment and award dated 12.7.2002 passed by the learned Member, M.A.C.T., Aizwal in M.A.C.T. Case No. 93 of 2000 awarding a sum of Rs. 1,59,000 to the claimant-respondent No. 1 as compensation for the death of her son who was 2 years old.

3. The claim petition being M.A.C.T. Case No. 93 of 2000 filed by respondent No. 1 against respondent No. 2 as well as the present writ petitioner, being the owner and the insurance company respectively, claiming compensation for the death of her son who was 2 years old, in respect of the accident occurred on 17.8.2000 arising out of the use of motor vehicle bearing registration No. MZ 01-9509 (city town bus) belonging to the owner, respondent No. 2. The writ petitioner has also been added as opposite party in the said proceeding as the

vehicle was insured by a valid insurance issued by the said insurance company. The learned Claims Tribunal, upon consideration of the materials available on record has passed the award of compensation for Rs. 1,59,000 together with interest at the rate of 12 per cent per annum from the date of filing of the claim petition till the date of payment and directing the insurance company to satisfy the said award.

4. The contention of the learned Counsel for the petitioner is that the manner in which the amount of compensation has been assessed by taking the notional income fixed under Second Schedule framed u/s 163-A of the Motor Vehicles Act keeping in view the age of the victim, is not proper.

5. Insurance company by the present writ petition has challenged the quantum of compensation awarded by the learned Tribunal. The insurance company never at any point of time during the pendency of the proceeding before the learned Tribunal filed any application seeking permission u/s 170 of the Motor Vehicles Act and hence, the defence available to the insurance company under the Motor Vehicles Act is limited to the defences u/s 149(2) of the said Act.

6. The Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, , has held as under:

(6) The right of appeal is a statutory right and where the law provides 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 it for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided u/s 149(2) of the Act. [See *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*,]. This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. 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 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 of the 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. As a matter of an illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected and a State enactment has barred the remedy of filing revision u/s 115, CPC in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court u/s 115, Code of Civil Procedure, no petition under Article 226 of the Constitution would lie for the

reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

(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 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.

7. A single Bench of this Court in *Oriental Insurance Co. Ltd. Vs. Mustt. Rejina Begum and Others*, by the judgment passed by Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, apart from the decision of the Apex Court has held that power of judicial review under Article 226/227 of the Constitution of India cannot be taken away and such power can be exercised when the Claims Tribunal or the court subordinate to the High Court is found to have acted without jurisdiction, i.e., by assuming jurisdiction, where no such jurisdiction exists, or refuses to exercise jurisdiction, where the jurisdiction exists, or acts beyond its jurisdiction or acts in flagrant disregard of law or rule governing its function or in violation of the principles of natural justice occasioning thereby failure of justice or when its Order is based on clear misreading or utter disregard of the provisions of law or when it acts under a statute, which is ultra vires. Though a mere erroneous decision is not amenable to writ jurisdiction under Articles 226 and/or 227, yet when an error is apparent on the face of the proceedings, such as, when it is based on clear ignorance or utter disregard of the provisions of law or gross failure of justice has occasioned thereby, the power to issue writ of certiorari under supervisory jurisdiction may be resorted to, though this power should be resorted to sparingly and only in appropriate cases, where the judicial consciousness of the High Court dictates it to act, lest a gross violation of justice or grave injustice should occasion.

8. It is a settled position of law that the High Court in exercise of its power under Article 227 of the Constitution of India cannot correct its every error unless it touches the jurisdiction of the court or it amounts to grave injustice or miscarriage of justice. Such power of superintendence is also to be exercised sparingly and only in exceptional cases and should not be exercised in a routine manner. The High Court exercising the power under Article 227 of the Constitution of India, is not to act as an appellate court and review or reweigh the evidence.

9. In the instant case, an amount of Rs. 1,59,000 as compensation together with interest at the rate of 12 per cent per annum has been awarded by the learned Tribunal for the death of the son of the claimant, upon whom the parents kept all hope that they will be looked after by the son in their old age. In fact, the loss

suffered by the parents due to the death of their son cannot be compensated in terms of money. However, since the provision of the Motor Vehicles Act has been enacted, some amount of compensation has to be arrived at by the learned Tribunal. Keeping in view the fact that claimant has lost her son and also the amount of compensation awarded by the learned Tribunal, I do not consider the present case to be the case of exceptional nature to invoke the jurisdiction under Article 227 of the Constitution, more so when the Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, has held that, the right of appeal of the insurance company being a statutory right limited to the grounds available u/s 149(2) of the Motor Vehicles Act, the ground of challenge cannot be enlarged by filing the writ petition under Article 226/227 of the Constitution of India.

10. The submission of learned Counsel for the petitioner for reduction of the rate of interest from 12 per cent to 9 per cent also cannot be acceded to, keeping in view of the rate of inflation and also the power of High Court to interfere with the judgment passed by the learned Tribunal in exercise of its jurisdiction under Article 227 of the Constitution of India.

11. In view of the above, I do not find any merit in the present writ petition. Hence, the same is dismissed.