
(2003) 01 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3995 of 1999

New India Assurance Co. Ltd.

APPELLANT

Vs

Premlata and Others

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 170

Citation : (2004) 2 ACC 120 : (2005) ACJ 1137 : (2004) 5 WLC 763

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : R.K. Mehta, for the Appellant; V.D. Dadhich and N.M. Lodha, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed by the insurance company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (for short, "the Tribunal") vide award dated 31.5.1999.

2. Mr. V.D. Dadhich, learned counsel appearing for the claimants-respondents has raised a preliminary objection regarding maintainability of the writ petition itself contending that the petitioner could have filed an appeal taking leave of the Tribunal under the provisions of Section 170 of the Motor Vehicles Act, 1988 (for short, "the Act, 1988") and in case he has not made any such attempt, his conduct debars him from filing a writ petition for the reason that if the statute provides for a remedy of appeal with a precondition of seeking leave of the Tribunal, writ petition is not maintainable.

3. On the other hand, Mr. Mehta, learned counsel for the petitioner, has submitted that the petitioner cannot be deprived of his legitimate right on such technical ground.

4. I have considered the rival submissions made by the learned counsel for the

parties and perused the record.

5. Admittedly, the provisions of the Act, 1988 provide for a remedy of appeal even to the insurance company to challenge the quantum of compensation and also taking other grounds provided he meets the precondition of seeking leave of the Claims Tribunal u/s 170 of the Act, 1988. Without seeking such leave, it is not permissible for the insurance company to file appeal before this court. [Vide National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, In the instant case petitioner could have availed the remedy of appeal provided he had sought the leave of the Claims Tribunal. As leave had not been sought petitioner cannot be permitted, generally, to take the benefit of his own mistake and agitate the issue by filing the writ petition as it is an extraordinary remedy where no alternative or efficacious remedy is available to a party. Thus, I find substance in the submission made on behalf of claimants-respondents.

6. Had an appeal been filed, this court could have examined the entire aspect involved in the case as the appreciation of evidence is permissible in that eventuality. This court has very limited scope under Article 227 of the Constitution as per the law laid down in Mohd. Yunus Vs. Mohd. Mustaqim and Others, wherein it has been held that even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution and the power can be used sparingly when it comes to the conclusion that the authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc., has resulted in grave injustice. [Vide Constitution Bench judgments of the Apex Court in D.N. Banerji Vs. P.R. Mukherjee and Others, and Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, For interference under Article 227, the finding of facts recorded by the authority should be found to be perverse or patently erroneous and dehors the factual and legal position on record. [Vide Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, Rukumanand Bairoliya Vs. The State of Bihar, Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others, Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others,

7. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no court could ever have reached them. [Vide Mrs. Rena Drego Vs. Lalchand Soni, Etc., Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, and M/s.

Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another, Unless the findings are patently erroneous and dehors the factual and legal position on record, exercising the power under Article 227 of the Constitution may not be justified and in that eventuality disturbing the findings of facts would amount to jurisdictional error. [Vide Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by competent statutory authority merely on the ground of insufficiency of evidence. [Vide Union of India and Others Vs. Himmat Singh Chahar, Similarly, in Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, the Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the authorities/courts below as the same is not permissible in proceedings under Article 226/227 of the Constitution.

8. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., the Hon''ble Supreme Court held that jurisdiction of the High Court under Article 227 of the Constitution is not appellate but supervisory and, therefore, it cannot interfere with the findings of fact recorded by the courts below unless there is no evidence to support the findings or the findings are totally perverse. Similarly, in Union of India and Others Vs. Rajendra Prabha and Another, the Hon''ble Supreme Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of authorities below.

9. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers'' Union and Another, the Hon''ble Apex Court observed that it is impermissible for the writ court to re-appreciate the evidence liberally and drawing conclusions on his own on pure questions of fact for the reason that it is not exercising the appellate jurisdiction over the awards passed by the Claims Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.

10. Similar view has been reiterated by the Apex Court in State of Maharashtra v. Milind, (2001) 1 SCC 4 ; M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., and Ouseph Mathai and Others Vs. M. Abdul Khadir,

11. The case requires to be considered in the light of the aforesaid limitation under Article 226/227 of the Constitution. The accident took place on 1.7.1995 at 7.30 p.m. when one three-wheeler was hit by truck No. PB 13-2175 being driven rashly and negligently and on account of that accident, one Manak Chand had

died. Claim petition was filed by the claimants-respondents claiming compensation to the tune of Rs. 11,00,000. Learned Tribunal examined the claim petition and recorded

the findings of facts that (i) there was a negligence on the part of the driver of the truck; (ii) three persons sitting in the three-wheeler died because of accident; (iii) the vehicle was insured with petitioner insurance company; and (iv) so far as quantum of compensation is concerned, on behalf of three persons, a sum of Rs. 11,29,200 had been claimed as compensation.

12. Deceased Manak Chand was aged about 53 years and was working on the post of District Education Officer. He was getting the salary of Rs. 5,630 per month and had the potentiality to earn even after his retirement and on this count, a sum of Rs. 9,79,200 was claimed by the claimants. A sum of Rs. 1,00,000 was claimed on account of loss of love and affection and a sum of Rs. 50,000 was claimed towards the expenses incurred in cremation, etc. The learned Tribunal examined this issue in detail and came to the conclusion that the salary of deceased Manak Chand was Rs. 5,310 apart from Rs. 100 as allowance and Rs. 220 as house rent allowance. The documentary evidence was produced in support of this claim. Thus, the deceased was getting Rs. 5,630 per month. He had left behind him his widow Premlata, two sons Navin Kumar and Kalpesh Kumar and mother Jethi Bai. The younger son was 19 years of age and the elder son Navin Kumar was 24 years in age and they were not earning, therefore, they were also held to be dependent upon the deceased. Thus, considering the major persons as two units and dividing the said income in ten units, it was held that each unit could have got Rs. 563 per month. The widow and the sons had been held to be entitled to three units and giving the benefit of the multiplier of 15, it came to Rs. 3,04,020 and it was held that the widow was entitled for a compensation to the tune of Rs. 2,02,680 and both the sons were entitled for a sum of Rs. 3,04,020. A sum of Rs. 1,00,000 was awarded in total, for loss of love and affection and Rs. 5,000 were allowed for expenses towards cremation, etc.

13. In sum and substance, Mr. Mehta could not point out any material irregularity in determination of the said amount of compensation or could not submit that the findings recorded by the Claims Tribunal are perverse, being based on no evidence, or contrary to the evidence on record. Thus, even if this writ petition is entertained. I find no ground to interfere with the impugned award.

14. The petition is accordingly dismissed. There shall be no order as to costs.