
(2010) 11 GAU CK 0054
In the Gauhati High Court
Case No : CRP No. 13 of 2009

New India Assurance Co. Ltd.

APPELLANT

Vs

R. Sangkhuma and Another

RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149(2), 170, 173

Citation : (2011) 2 GLR 254

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : M. Guite, for the Appellant; S.N. Meitei and S. Vanlaihriata, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—The judgment and award, dated 29.9.2009, passed by the Learned Member, Motor Accident Claims Tribunal, Aizawl, Mizoram in MACT Case No. 41 of 2008, has been challenged by the insurer of the offending vehicle, by filing this application under Article 227 of the constitution of India.

2. The Respondent No. 1's son R. Laldingpuia, aged about 32 years (hereinafter called "the deceased"), met with a vehicular accident, on 22.4.2008, involving the offending vehicle No. MZ-01-B-2129, belonging to the Respondent No. 2. The said vehicle was insured with the New India Assurance Company Ltd., i.e., the revision Petitioner. Due to the said vehicular accident, the deceased died leaving behind his father, i.e., claimant, his wife and three minor children. The father of the deceased filed the claim petition, claiming compensation, due to the death of the deceased. The opposite parties, i.e., the owner and the insurer of the vehicle, contested the claim, by filing written statements. Upon the pleadings of both the parties, the learned trial Judge framed the following issues for deciding the matter: -

1. Whether the present claim application is maintainable or not?

2. Whether there is any fault on the driver or the owner of the vehicle involved in this case?

3. Whether the claimant is entitled to any compensation and if so, who is liable to pay and to what extent?

3. In order to substantiate his claim, the claimant examined himself and another witness as PW1 and PW2 respectively. The claimant, deposing as PW1, stated that the deceased died in a Road Traffic accident at Bhaga Bazar, Assam on 22.4.2008 at 10 p.m. He stated that, on the night of the accident, his son, who was doing business of buying and selling pigs, was waiting, for a vehicle, to carry his pigs and at that time, the Oil Tanker, bearing Registration No MZ-01B-2129, which was driven at a very high speed, hit his son, as a result of which he died on the spot. He also stated that his son used to buy pigs from different places, including Lakhipur and Silchar and sell those at Aizawl and earned profit of Rs. 3000 or more per pig. He also stated that the deceased usually paid Rs. 8,000-10,000 for hiring the vehicles to carry the pigs and that he earned Rs. 15,000 per month from his business of supplying pigs. He further deposed that their family consisting of 8(eight) members depended on the income of the deceased, who was married person having his wife (widow) and three children. According to the PW1, the eldest child Laldinhlua is 5(five) years old, the second child, Laldinthari is 3(three) years old and the youngest Chanchinthamawipuii is 1(one) year old. He also stated that the wife of the deceased and his children were living with the claimant and that the affairs of the family was managed by the claimant, being the head of the family.

4. The claimant (PW1) exhibited the charge sheet, issued by the police with regard to the accident, the police report submitted by the police in connection with the said case, the authorization letter issued by Ms. Lalruati, i.e., the wife of the deceased thereby authorizing the claimant to file the present claim case, Birth Certificate of the deceased, Death Certificate of the deceased. Post Mortem Examination Report in respect of the deceased, copy of the challan forwarding the dead body of the deceased, copy of the Accident Information Report prepared by the police, Registration Certificate of the offending vehicle, a copy of Certificate of fitness and Certificate of pollution of the offending vehicle, a copy of the Driving Licence of the driver of the said vehicle, a copy of the receipt regarding payment of tax in respect of the said vehicle, a copy of the goods carriage permit in favour of Sh. Lalmalsawma, a copy of the special permit of the offending vehicle, a copy of fitness certificate of the offending vehicle, a copy of the Insurance Policy pertaining to the offending vehicle issued by the New India Assurance Company Ltd., a copy of the inquest of the dead body of the deceased, a copy of the Income Certificate of the deceased, issued by the President of Village Council, as Ext. Nos. C-1 to C-18, respectively.

Though the PW1 was cross-examined on behalf of the opposite party, no material contradiction could be elicited to impeach his evidence.

5. The PW2, who used to purchase pigs from the deceased, supporting the evidence of the PW1, stated that the monthly average income of the deceased, out of the said business, was Rs. 15,000-Rs. 20,000. This witness was also cross-examined on behalf of the opposite party No. 2 and his evidence regarding the income of the deceased remained undemolished.

6. Considering the evidence on record, the learned Trial Judge came to the finding, that the deceased died in a vehicular accident, involving the offending vehicle, owned by the opposite party No. 2 and insured by the New India Assurance Company Ltd., The learned Judge also came to the finding that the deceased was aged about 32 years, earning Rs. 15,000 per month. Accordingly, as per Second Schedule, appended to the Motor Vehicles Act, 1988, ("the Act"), the Learned Trial Judge applied the multiplier 17 to assess the compensation. The total compensation was fixed at Rs. 20,54,500 on the following heads: -

1. Loss of income	=	Rs. 15,000	x	12	x	17	x	2
								3
								= Rs. 20,40,000
2. Funeral expenses	=	Rs. 2,000						
3. Loss of estate	=	Rs. 2,500						
4. Conventional amount for general Damages in respect of mental and physical shock, agony and bereavement of the son of the family	=	Rs. 10,000						
								TOTAL = Rs. 20,54,500 (Rupees twenty lakh fifty-four thousands and five hundreds) only.

7. Aggrieved by the said judgment and award, the insurer, as revision Petitioner, has come up with this revision petition, filed under Article 227 of the Constitution of India. The impugned award has been challenged on two principal grounds, i.e., with regard to the quantum of the amount and the involvement of the offending vehicle.

8. I have heard Mr. M. Guite, learned Counsel appearing for the revision Petitioner and Mr. S.N. Meitei, learned Counsel appearing for the Respondents.

9. Mr. M. Guite, learned Counsel, appearing for the Petitioner, taking me through the evidence on record and the impugned judgment and award, has submitted that the learned trial judge committed gross error on the face of the record by granting the compensation amounting to Rs. 20,54,500, without sufficient evidence with regard to the income of the deceased and wrongly holding that the monthly income of the deceased was Rs. 15,000. The learned Counsel, further submitted that the learned trial Judge failed to appreciate the evidence properly and came to erroneous finding that the accident could took place due to rash and negligent driving on the part of the driver of the vehicle. According to the learned Counsel, appearing for the revision Petitioner, the above findings and the decisions given by the learned trial judge are perverse and liable to be set aside and quashed in exercise of the jurisdiction, vested under Article 227 of the Constitution of India. In support of his contention, the learned Counsel has relied on the decisions held in the case of-

(1) Surya Dev Rai Vs. Ram Chander Rai and Others, , and

(2) Arulvelu and Another Vs. State represented by the Public Prosecutor and Another,

10. Refuting the said argument, advanced by the learned Counsel for the Petitioner, Mr. S.N. Meitei, learned Counsel, appearing for the claimant-Respondent, has submitted that the revision petition, filed u/s 227 of the Constitution of India, is not maintainable, inasmuch as the revision Petitioner failed to comply with the requirement prescribed by the statute, i.e., the provision provided by Sections 170 and 149(2) of the Act. The learned Counsel has submitted that, as the Petitioner failed to obtain permission u/s 170 of the Act, the Petitioner cannot challenge the quantum or merit of the impugned judgment and award except on the limited grounds cited u/s 149(2) of the Act. It is also submitted, on behalf of the said Respondent that, as the learned trial Judge recorded his findings on the basis of the evidence on record, any interference by this Court, in exercise of the jurisdiction vested under Article 227 of the Constitution of India, will amount to entertaining an appeal and re-appreciating the evidence on record, which is not permissible, except on the ground of perversity, in an application under Article 227 of the Constitution of India. In support of his contention, the learned Counsel has relied on the following decisions: -

(1) National Insurance Co. Ltd. v. Member, Motor Accidents Claims Tribunal and Anr. (2002) (3) TAC 659 (Gau.).

(2) New India Assurance Co. Ltd. Vs. Member, Motor Accident Claims Tribunal and Others,

(3) Rekha Paul and Others Vs. Oriental Insurance Co. Ltd. and Others,

(4) Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others,

(5) Sadhana Lodh Vs. National Insurance Company Ltd. and Another,

11. In the case of Surya Dev Rai (supra), the Supreme Court, while laying down the scope of exercising the power under Articles 226 and 227 of the Constitution of India, amongst others, observed:

where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

12. In the case of Arulvelu (supra), the Supreme Court referring to the case of Gaya Din v. Hanuman Prasad (2001)1 SCC 501 observed:

In Gaya Din v. Hanuman Prasad, this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

13. In the case of National Insurance Co. Ltd. (supra), this Court observed, that the Insurance Company, when impleaded as a party by the court as enjoined in

Section 170 of the Act, can only contest the proceedings on merits if the conditions cited in Section 149(2) of the Act are satisfied and the Insurance Company obtains in writing an order from the Tribunal and that should be a reversed order. Failure to comply with the said statutory requirement debars the insurer to challenge the award except on the limited grounds mentioned in Section 149(2) of the Act. In the above referred case, the court observed:

In the aid of power under Articles 226/227, the statutory scheme should not be allowed to be defeated throwing the legal representatives of the deceased or the injured in the accident to a prolonged litigation totally at the instance of the Insurance Company.

Admittedly, in the present case, though the Insurance Company sought permission u/s 170 of the Act, the learned Member of the Tribunal, by his order, dated 20.8.2009, refused to grant permission u/s 170 of the Act.

14. In the case of New India Assurance Co. Ltd. (supra), a Division 1. (2008) 3 GLR 437.

Bench of this Court, disapproved the decisions rendered in (1) Oriental Insurance Co. Ltd. Vs. Mustt. Rejina Begum and Others, (2) National Insurance Co. Ltd. and Ors. v. Gauri Roy (Deb) and Ors. 2005 (1) GLT 569 : (2005) 3 GLR 155 and (3) National Insurance Co. Ltd. Vs. Soma Devi and Others, and also held that the decision in Smt. Milan Rani Saha Vs. New India Assurance Company Ltd., Agartala and Others, was no more a good law. Their Lordships in the Division Bench, observed that the grounds stated u/s 149(2) of the Act cannot be enlarged by filing an application under Article 226 of the Constitution of India. The Division Bench, referring to the decision, rendered by the Supreme Court in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, observed as follows:

That, from a plain and simple reading of the judgment it appears to our mind that an insurer is not entitled to file and initiate any proceedings on any ground other than those u/s 149(2) of the Act, the principle laid down by the Apex Court admits no other view. The grounds of challenge cannot be enlarged by filing a writ petition under Article 226 of the Constitution of India.

15. In the case of Rekha Paul and Ors. (supra), a Full Bench of this Court observed: -

when the Insurance Company acted in a manner disentitling itself from invoking the discretionary and equitable jurisdiction under Article 226 of the Constitution on account of its failure to seek leave of the learned Tribunal to take the grounds available u/s 170 of the Act, there could not have been any occasion for it to file the instant writ petitions under Articles 226/227 of the Constitution.

In deciding the above referred case, the writ appeal and the writ petition, filed by the Insurance Company, challenging the award, were dismissed.

16. In the case of Bijoy Kumar Dugar (supra), the Supreme Court observed, that u/s 173 of the Act, an insurer has the right to file an appeal before the High Court on limited grounds as provided by Section 149(2) of the Act, and that 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.

17. In the case of Sadhana Lodh (supra), the Supreme Court observed as follows:

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 the 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.

18. In the light of the above decisions, rendered by various courts and the Supreme Court, a petition under Article 227 of the Constitution of India can be entertained only on the ground of perversity leading to failure of justice and to see if the court, whose order is challenged, acted within its parameter. If the Court/Tribunal acted within its parameter and if the impugned order does not suffer from perversity, a petition under Article 227 of the Constitution of India cannot be entertained. That apart, when there is statutory provision for appeal or revision and if the impugned order of the Court/Tribunal, is made within the prescribed parameter of such Court/Tribunal, the power under Article 227 of the Constitution can not be exercised to correct the error or the mistake committed by the trial court.

It is also settled law that if there appears two views and the view taken by the trial Judge is found to be reasonable and based on the evidence, the same cannot be interfered by exercising the power vested under Article 227 of the Constitution of India.

19. According to the Longman Dictionary of Contemporary English, International Edn., the word "perverse" means - "deliberately departing from what is normal and reasonable". A finding can be termed as "perverse" if the same is against the weight of the evidence. Therefore, the findings based on evidence cannot be termed as perverse.

20. The grounds taken in this review petition is that the learned trial judge passed the impugned order without sufficient evidence regarding income of the deceased and that the findings regarding rash and negligent driving, on the part of the driver, was erroneous and without evidence.

From the evidence on record, it is found that the deceased, who was aged about 32 years, used to do business of supplying pigs by purchasing the same from

different places. PW2, who was a regular purchaser of pigs from the deceased, stated that the deceased used to sell him at least ten pigs in a month and that he used to earn least Rs. 3,000 to 4,000 per pig. He also stated that the monthly average income of the deceased was Rs. 15,000 to Rs. 20,000. His evidence lends support in favour of the evidence of the claimant (PW1) regarding the income of the deceased. There is nothing on record to dispute the said findings.

The evidence regarding the income of the deceased remained unshaken. The learned trial judge, relying on the said decision, came to the finding that the monthly income of the deceased was Rs. 15,000 and accordingly calculated the compensation.

21. In view of the above, I find that the learned trial Judge, while calculating the quantum of compensation, relied on the evidence on record and there is nothing to show that the said findings were not based on evidence. Record reveals that the learned Member of the Tribunal, while arriving at the said findings and granting the award, acted within his jurisdiction. I find no reason to hold that the said findings were perverse or that the learned Member acted beyond his jurisdiction.

22. In the enquiry report, submitted by the police, it has been mentioned that accident took place due to rash and negligent driving on the part of the driver of the vehicle.

23. The driver of the vehicle, deposing as DW2, on behalf of the opposite party, during his cross-examination, stated that, he and his relatives had asked the relatives of the deceased to forgive him. He also admitted that the deceased died due to his fault. Admittedly, the deceased died in a vehicular accident, involving the offending vehicle, which was driven by the said driver, i.e., DW2.

24. Therefore, in view of the said admission, made by the driver himself, and the police report regarding rash and negligent driving, I find no sufficient reason to hold that the findings of the learned trial Judge, regarding rash and negligent driving or fault of the driver, was perverse and without any reasonable basis. Therefore, the said findings are found to be reasonable based on evidence on record.

25. Considering the entire aspect of the matter, I find no sufficient merit in this petition, requiring interference in exercise of the power vested by Article 227 of the Constitution. Accordingly, the revision petition is dismissed.

26. However, before I part with this matter, I feel it just and proper to record that, out of the awarded amount, Rs. 12,00,000 (Rupees twelve lakhs) only, i.e., and amount at the rate of Rs. 4,00,000 (Rupees four lakh) only in the name of each of the three minor children of the deceased, shall be kept in the fixed deposit, under a long term scheme, in a Nationalised Bank, till the said minors attain their majority.

27. The learned Member of the Tribunal shall be at liberty to disburse the

remaining amount of Rs. 8,54,500 (Rupees eight lakhs fifty-four thousand and five hundred) only amongst the other legal representative of the deceased as per law.

A copy of this judgment, along with the Lower Court Records, be sent to the court of the Learned Member, Motor Accident Claims Tribunal, Aizawl for doing the needful.