

(1997) 11 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 416 of 1997

New India Assurance Co. Ltd.

APPELLANT

Vs

Ranjit Ghosh and Another

RESPONDENT

Date of Decision : 18-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149, 166, 168

Citation : (1999) ACJ 159

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant;

Final Decision : Dismissed

Judgement

N.G. Das, J.—This application under Articles 226/227 of the Constitution of India has been filed by the petitioner, namely, the New India Assurance Co. Ltd. for quashing the judgment/award dated 17.3.1997 passed by the learned Member, Motor Accidents Claims Tribunal, West Tripura, Agartala in TS (MAC) 174 of 1996.

2. Before entering into the contentions advanced by Mr. Biswas, the learned Counsel appearing on behalf of the petitioner, it may be advantageous at this stage to have a brief resume of the facts relevant for the purpose.

3. One Ranjit Ghosh, son of late Ch. Harendra Ghosh presented an application u/s 166 of the Motor Vehicles Act, 1988 (abbreviated hereinafter as "the Act") claiming compensation on account of the injuries he sustained due to motor accident which took place on 12.3.1996 at about 7.30 p.m. on Assam-Agartala road. The vehicle which was involved in the accident was stated to be vehicle bearing No. TR-01-2681. The present petitioner was also made one of the respondents in the claim petition. The learned Member, Claims Tribunal also issued notice to the present petitioner and the present petitioner as has been submitted by the learned Counsel for the petitioner contested the case by filing a

written objection.

4. The learned Member of the Claims Tribunal after appreciation of the evidence adduced by the parties arrived at the conclusion that the accident actually occurred on the aforesaid date and time due to rash and negligent driving and after making this finding he also held that the claimant-petitioner who sustained injuries on his person is also entitled to get compensation and after considering the evidence on record the learned Member, Claims Tribunal awarded a total sum of Rs. 90,000 to the claimant-petitioner with interest at the rate of 12 per cent per annum. Learned Member, Claims Tribunal also directed the present petitioner for making the payment of the amount.

5. Admittedly, the petitioner did not prefer any appeal. Mr. Biswas, the learned Counsel appearing for the petitioner contends that even though the petitioner has not filed any appeal the petitioner is very much competent to file such an application under Articles 226/227 of the Constitution of India. The first ground as argued by Mr. Biswas is that the learned Member, Accidents Claims Tribunal misdirected himself in appreciating the evidence and hence it requires interference by this Court for issuing a direction to the Tribunal for re-determination of the case under the provision of Section 168 of the Act.

6. The second contention of the learned Counsel for the petitioner is that learned Member, Claims Tribunal has not determined any amount and that he has neither rejected the evidence of the doctor nor accepted it. These are the main grounds Mr. Biswas, the learned Counsel for the petitioner has agitated before me for interference.

7. In course of his submission Mr. Biswas has also drawn my attention to a decision of the Supreme Court rendered in the case of Baburam Prakashchandra Maheshwari v. Antarim Zila Parishad, Muzaffarnagar AIR 1969 SC 556. The observation to which my attention has been drawn may be quoted as under:

When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy and discretion rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted.

8. As already stated the three points which have been urged before me do not appear to me to characterise/treat this case as an exceptional one calling for the

writ jurisdiction of this Court. There is specific provision for appeal and Section 149 of the Act has clearly laid down when and under what grounds an insurance company can prefer appeal. Mr. Biswas" contention is that this provision is for Tribunal only and not for the High Court. I am, however, unable to appreciate this contention. On going through the judgment I find that the learned Member, Claims Tribunal has discussed the evidence including the evidence of the doctor and after discussing the evidence he arrived at the conclusion that the claimant petitioner was in hospital for more than 23 days and that even after he was discharged from the hospital he had to receive treatment as O.P.D. patient and also under Dr. Jayanta Nandi of G.B. Hospital. It appears from the judgment that learned Member, Claims Tribunal also took in view the mental agony and pains suffered by the claimant-petitioner. He specifically stated all these things and after discussing these aspects the learned Member, Claims Tribunal also took in view the amount which the claimant-petitioner spent in connection with his treatment. After taking all these things in view learned Member arrived at the conclusion that an amount of Rs. 90,000 in total should be paid as compensation. I am, therefore, unable to agree with the contention of Mr. Biswas that the court neither rejected the evidence of doctor nor made any finding in respect of the amount to be paid as compensation to the claimant-petitioner.

9. In this context it is also felt worthwhile to mention that this Court in a Full Bench judgment had dealt with the scope of preferring an appeal by an insurance company. The decision is available in the case of United India Insurance Co. Ltd., Gauhati Vs. Member, Motor Accident Claims Tribunal, Lakhimpur and Others, In the aforesaid judgment of this Bench where I was also a Member, we held that the insurance company may prefer an appeal only under the condition as laid down u/s 149 of the Act.

10. By the aforesaid provision of Section 149 of the Act Parliament in its wisdom allowed the insurance company to take defence mentioned in the aforesaid section. Therefore, considering the facts and the legal position I have discussed above, I am of the considered opinion that such application invoking the writ jurisdiction of the court under Articles 226/227 of the Constitution of India is not at all maintainable and accordingly, this petition is dismissed. But under the circumstances, there would be no order as to costs.