
(2006) 06 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 162 of 2000

New India Assurance Co. Ltd.

APPELLANT

Vs

Sadhan Ch. Deb Roy and Others

RESPONDENT

Date of Decision : 09-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149, 149(2), 165, 166, 168

Citation : (2006) GLT 188 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : D.K. Biswas and S. Lodh, for the Appellant; S. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—By making this application under Article 227 of the Constitution of India, the Petitioner, namely, New India Assurance Company Ltd., has challenged the legality of the award, dated 18.03.2000, passed by the Motor Accident Claims Tribunal, North Tripura, Dharmanagar, Agartala, in T.S. (MAC) No. 10/97, whereby a sum of Rs. 13,05,480/- has, in all, been granted as compensation to the claimants-Respondents.

2. I have heard Mr. D. K. Biswas, learned Counsel, for the Petitioner, and Mr. S. Bhattacharjee, learned Counsel, appearing on behalf of the Respondents.

3. The facts giving rise to the present writ petition are as follows:

The claimants, who are four in number, made an application u/s 166 of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act"), seeking compensation for the death of their younger brother, Swapan Chandra Deb Roy, sister-in-law, Ira Deb Roy (Dutta), and Ms. Sutithi Deb Roy, minor daughter of the said deceased couple. Deceased Swapan Chandra Deb Roy was, at the

relevant time, Superintendent of Tea Board of India and as he was posted at Agartala, he used to reside with his wife, Ira Deb Roy (Dutta) and their daughter, Sutithi Deb Roy, at Agartala, while the claimants used to live, at their ancestral house, at Badarpur. On 31.10.96, when Swapan Deb Roy (since deceased) was returning with his wife and his daughter to Agartala from Silchar by the bus bearing registration No. AS-01 -C-6355, the said bus was being driven at a high speed, rashly and negligently, the driver failed to control the bus and the same, on Assam-Agartala Road, capsized, at Sridhangcherra and Swapna Deb Roy, his wife, Ira Deb Roy (Dutta), and their minor daughter, Sutithi Deb Roy, died on the spot. The claimants, as legal representatives of the said three deceased, made application, as indicated hereinbefore, seeking compensation for the death of the said three persons.

4. The owner as well as the insurer of the offending vehicle contested the claim by filing their written statements separately and in their written statements, while the accident was admitted by them, the allegation that the vehicle was being driven rashly and negligently was denied. In the claim proceeding, while the fact that the vehicle stood insured with New India Assurance Company Ltd., Agartala Branch (i.e. the present Petitioner) was not disputed, the legal right of the claimants to receive compensation for the death of the said three persons was challenged.

5. The learned Tribunal framed the following issues for determination:

(a) Has the death of Swapan Chandra Deb Roy, Ira Deb Roy (Dutta), Sutithi Deb Roy occurred on 21.10.1996 at Sidhangcherra due to vehicular accident arising out of rash and negligent driving of the vehicle No. AS-01 -C-6355 (Night Super bus)?

(b) Are the claimants entitled to compensation and if so, to what extent?

(c) Which of the Defendants has to pay the compensation?

(d) To what other relief (s) are the parties entitled?

6. The claimants adduced evidence by examining two witnesses including one of the claimants. No evidence was, however, adduced by the contesting opposite parties.

7. The learned Tribunal has answered the issue No. 1 in the affirmative and in favour of the claimants. This finding could not be assailed. However the learned Tribunal's conclusion in respect of the remaining issues, whereby the learned Tribunal held that the claimants were entitled to receive diverse sums of money as compensation is challenged before this Court by way of the present writ application.

8. What has been submitted, on behalf of the insurer, is that none of the claimants were dependants on the earnings of the said deceased and, hence, they were not entitled to compensation under the law for loss of dependency.

9. It has been further submitted, on behalf of the insurer-Petitioner, is that while it is permissible for the legal representatives of a person, who dies in an accident arising out of use of a motor vehicle in a public place, to make application seeking compensation to the Claims Tribunal, constituted u/s 165 of the MV Act, and though the Claims Tribunal has the power to award compensation to the legal representatives of the deceased, the fact remains that the Tribunal is, in the light of the provisions of Section 168 of the MV Act, bound to determine the amount of compensation, which appears to it to be "just". Taking cue from the facts that it is the duty of the Tribunal to determine the amount, which appears to it to be "just" and payable to the claimant (s), it is submitted, on behalf of the insurer-Petitioner, that for the death of a person involved in a motor vehicular accident, two legal representatives may receive two different sums of money as compensation and while it is possible for a legal representative of a person, who dies in a motor vehicular accident, to receive compensation for loss of the estate of the deceased or for funeral expenses, no compensation can be awarded to such a legal representative for loss of dependency or for monetary loss if the legal representative, who claims compensation, was never a dependant on the deceased and could never have been a dependant on the deceased. To put it differently, what is contended, on behalf of the insurer-Petitioner, is that even if it is considered, in the case at hand, that the claimants, as sisters of deceased Swapan Ch. Deb Roy, could have received compensation for the loss of dependency in respect of death of their said deceased brother, the question of their receiving compensation for the loss of dependency in respect of the death of their sister-in-law, namely, Ira Deb Roy (Dutta) or the minor daughter of the said deceased couple, namely, Sutithi Deb Roy, did not arise at all, particularly, when it was not the case of the claimants that they were dependants on their sister-in-law or their niece and/or that they were, at any point of time, likely to be dependant on their said deceased sister-in-law or their niece. By granting compensation for loss of dependency not only in respect of the claimant's said deceased brother, but also compensation on the ground of loss of dependency in respect of the claimants' sister-in-law and niece, the learned Tribunal, according to the insurer-Petitioner, has gone beyond the statutory powers given to it, for, the Tribunal has not determined at all, in the present case, contends the insurer-Petitioner, "just" compensation, which was the very object with which the Tribunal has been constituted. Support his submissions is sought to be derived by Mr. D. K. Biswas from the decisions in *Smt. Manjuri Bera v. Oriental Insurance Co. Ltd.* reported in (2) 2004 C.C.R. 176 (Cal) , *Resham Kaur Vs. Ramesh Kumar* , *Shiv Kumar and Others Vs. Raj Kumar and Others*, and *Noorulla Vs. P.K. Prabhakar and Another* , .

10. While opposing the writ petition, it has not been seriously contended, on behalf of the claimants, that the claimants were dependent on deceased Ira Deb Roy (Dutta) nor is it seriously contended that the said minor daughter of the said deceased couple was a potential source of dependency for the claimants and/or that for the death of these two persons, the claimants were entitled to receive

more than the loss of estate or the expenses for the funeral, it is contended, on behalf of the claimants-Respondents, that since the claimants are the only legal representatives, who have made the claim in respect of the death of Ira Deb Roy (Dutta) and the said minor daughter of the said deceased couple, they are entitled to compensation.

11. Without entering into the question as to whether the amount, awarded as compensation, needs interference by this Court, what is of paramount importance to note is that a Division Bench of this Court in *New India Assurance Company Ltd. v. Member, Motor Accident Claims Tribunal, Guwahati Writ Appeal No. 445 of 2005*, decided on 3.3.2006, has held that the existence of a right is a very foundation of exercise of jurisdiction under Article 226 and since Section 149 of the MV Act gives a restricted right of appeal to the insurer, interference with an award, at the instance of the insurer, is, in no case, permissible except, perhaps, when the award is challenged as an award having been obtained by fraud. Though it is true that the decision, in *New India Assurance Company Ltd. (supra)*, as has been contended before me, relates to exercise of jurisdiction by the High Court under Article 226 of the Constitution of India, the fact remains that the decision, in *Oriental Insurance Co. Ltd. (supra)*, has overruled the decisions in *Oriental Insurance Co. Ltd. Vs. Mustt. Rejina Begum and Others*, , and *National Insurance Co. Ltd. and Ors. v. Gauri Roy (Deb) and Ors.* reported in 2005 (1) GLT 569, wherein not only the powers under Article 226, but also under Article 227 of the Constitution of India had been dealt with. Though it is true that the decision, referred to hereinbefore, of the Division Bench in *New India Assurance Company Ltd. (supra)* speaks only of the powers of the High Court under Article 226, the fact remains that *Rejina Begum (supra)* and *Gauri Roy (Deb) (supra)* have been specifically overruled by the Division Bench in *New India Assurance Company Ltd. (supra)* and, hence, the present writ petition, though made under Article 227, cannot be entertained, for, the overruling of the decision in *Rejina Begum (supra)* and *Gauri Roy (Deb) (supra)* has the effect of laying down that under no circumstances, a writ petition under Article 226 or 227 would be maintainable except in the case of fraud, at the instance of the insurer.

12. While considering the question as to whether an award given by Motor Accident Claims Tribunal can be interfered with at the instance of the insurer, what needs to be noted is that *Rejina Begum (supra)* is a decision, which had not been dealt with the merit of any particular writ petition. What had been considered, in *Rejina Begum (supra)*, was whether a revision u/s 115 of the CPC or a writ petition under Article 226 or 227 can, at the instance of the insurer, ever be entertained by the High Court against an award, rendered under the MV Act. Holding to the effect that a revision would not be maintainable, the Court, in *Rejina Begum (supra)*, held thus:

10. While dealing with the present set of revision petitions, it is imperative to note that unlike the power of judicial review and of superintendence, which Articles 226 and 227 confer on the High Courts, the appeal or revision is a

creature of legislature and it is up to the legislature to provide or not to provide the right of appeal against a judicial decision or order and, similarly, it is for the legislature to decide whether the High Courts should be given revisional jurisdiction or not in any adjudicatory process.

11. That the revisional jurisdiction is a creation of statute and cannot be assumed or exercised by the High Court in the name of having the power of superintendence over the subordinate Courts unless the statute, in a given case, either expressly or by implication, so provides, cannot be disputed and has, in fact, not been disputed before me. With this limitation in mind, the question as to whether the revisional power u/s 115 of the Code can be invoked against an award passed by a Tribunal has to be considered.

12. A careful reading of Section 115 of the Code reveals that the revisional power can be exercised only when there is no appeal provided for. Hence, when a statute provides for an appeal against a judicial order, revision against such an order will not lie irrespective of the fact whether the right of appeal is absolute or conditional, restricted or otherwise. In other words, howsoever truncated the right of appeal may be, so long as the provisions for appeal remain, revisional jurisdiction cannot be exercised, for, it is for the legislature to decide whether to give or not to give against a judicial order the remedy of absolute right of appeal or restricted right of appeal. When the legislature has chosen to give to the insurer, u/s 149(2) of the M.V. Act, a right of appeal, though limited, it will bar exercise of revisional jurisdiction.

13. Coupled with the above, as has been correctly laid down in *Sukla Dev Nath* (supra), the grounds of appeal given to an insurer u/s 149(2) can not be expanded by taking recourse to the revisional jurisdiction of the High Court. In other words, when a remedy, by way of appeal, has been provided for by the statute, howsoever restricted such right of appeal may be, the making of the provisions for appeal in themselves create complete bar for the High Court to exercise revisional jurisdiction. Considered thus, I see no reason to take a view different from what this Court has taken in *Sukla Dev Nath* (Supra), though reasoning for coming to the same conclusion, namely, that the revisional jurisdiction cannot be invoked against an appealable award is, somewhat different. In *Sukla Dev Nath* (Supra), what has been held is that the limited right to appeal provided to an insurer u/s 149(2) of the M.V. Act cannot be expanded by taking recourse to Section 115 of the Code; whereas I am of the view that the legislature, having provided to the insurer a right of appeal, howsoever truncated such right may be, no revisional jurisdiction can be invoked by the High Court, for, Section 115 of the Code makes it abundantly clear that where an appeal lies, revision will not be entertainable, howsoever restricted the right of appeal may be.

13. While considering however, the question as to whether the decision of the Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd.* and *Another*, has laid down that the High Court can never interfere with an award at

the instance of an insurer under Article 226 and/or 227, the Court, in *Rejina Begum (supra)*, having taken note of the decision, in *Sadhana Lodh (supra)*, observed as follows:

39. I have already held that an award, which is appealable u/s 173 MV Act, is not amenable to revisional jurisdiction of the High Court. Can this restriction have any bearing on the High Court's powers under Articles 226 and/or 227? That the curtailment of the revisional jurisdiction of the High Court cannot take away its constitutional jurisdiction to issue a writ of certiorari to a Civil Court subordinate to it or the power conferred on the High Court cannot be taken away by removing the revisional jurisdiction has been succinctly described in *Surya Dev Rai Vs. Ram Chander Rai and Others*, , wherein the Apex Court, while dealing with the recent amendment of the Code of Civil Procedure, whereby High Court's revisional jurisdiction in respect of interlocutory orders has been taken away, observed and held as under:

We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away-and could not have taken away-the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court not is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 Code of Civil Procedure, and is available to be exercised subject to rules of self-discipline and practice which are well settled.

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42. In fact, in the *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, , the Supreme Court had culled down the principles governing the exercise of powers under Article 227. Taking into account what had been culled down as the parameters of the powers of the High Court under Article 227 in *Navjot Sandhu (supra)*, the Supreme Court in *Surya Dev Rai (supra)*, observed thus:

The principles deducible, well settled as they are, have been well summed up the stated by a two-judge Bench of this Court recently in *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, . This Court held:

- i. The jurisdiction under Article 227 cannot be limited or fettered by any Act of the State Legislature;
- ii The supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order;
- iii. The power must be exercised sparingly, only to keep subordinate courts and

tribunals within the bound of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise.

43. What is, however, of immense importance to note is that the Court has clarified in *Surya Devi Rai* (supra) that while exercising certiorari jurisdiction, the High Court proceeds on the assumption that the Court, which has the jurisdiction over a subject matter, has jurisdiction to decide wrongly as well as rightly and that the High Court would not, therefore, assign to itself, while exercising the power of certiorari, the role of an appellate Court and step into appreciating or evaluating the evidence and/or substitute its own findings in the place of those arrived at by the inferior Court. In short, while acting on the certiorari jurisdiction, though the High Court cannot convert itself into an appellate Court, it remains free to exercise the powers of issuing writ of certiorari if the conditions precedent for exercise of such powers exists. As to when the High Court can interfere under Articles 226 and/or 227 is summed up in *Surya Devi Rai* (supra) as follows:

such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with from 1.7.2002 in Section 115 of the CPC can not and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory order; passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping subordinate courts within the bounds of their jurisdiction. When a Subordinate court has assumed a jurisdiction, which it does not have or has failed to exercise a jurisdiction, which it does have or the jurisdiction though available, is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of Certiorari or the exercise of supervisory jurisdiction, none is

available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceeding such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned hereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonable and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceeding in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re appreciation or evaluation of evidence or correct errors in drawing inferences or correct of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh. The High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

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47. The authorities cited above clearly show that the power of the High Court under Articles 226 and /or 227 cannot be restricted by a statute. The restraint of not interfering with an order, which is adhered to by the High Courts, is really a self-imposed restriction and this restriction will not stand in the way of exercise of writ jurisdiction if the grounds for exercise of such powers exist. In other words, notwithstanding the relief provided, within the scheme of an enactment, against an order passed by a Court Tribunal, the High Court can still exercise jurisdiction of issuing writ of certiorari under Articles 226 and/or 227, when the 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 Article 226, 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.

48. Bearing in mind the parameters of the powers of the High Court under Articles 226 and 227, as indicated hereinabove, I, now turn to the case of *Sadhana Lodh* (supra). Let me, first, put the facts of the case as discernible from the decision referred to in *Sadhana Lodh* (supra). The facts, in brief, were thus: Against an award of Rs. 3,50,000/-, the insurer came before this Court under Article 226/227 of the Constitution of India. While the learned Single Judge dismissed the application, the Division Bench entertained the same and interfered with the award by reducing the amount of compensation from Rs. 3,50,000/- to Rs. 3,00,000/-. It was in this factual scenario that the decision in *Sadhana Lodh* (supra) needs to be appreciated. It was contended before the Supreme Court, on behalf of the claimant, that when a remedy of appeal is available to the insurer, an application under Article 227 was misconceived. This submission was countered by the insurer by contending that since an insurer has limited grounds of appeal available to it u/s 173 of the M.V. Act and when, by availing any of these grounds, an insurer cannot challenge the award questioning the quantum of compensation awarded by the Tribunal, it should be opened for the insurer to file an application under Article 226/227. This argument, raised on behalf of the insurer, was repelled by their Lordships of the Supreme Court in the

manner as indicated in Para 6 of the decision, which is reproduced herein below:

The right of appeal is statutory right and where the law provides remedy by filling and appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 or the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 1549[2] of the Act limits the insurer to file an appeal on those enumerated 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. v. Nicolletta Rohtagi 2002 ACJ 1950 [SC]. 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 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 of 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, Code of Civil Procedure, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution of India. 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 High Court under Article 226 of the Constitution.

49. I am unable to locate, in the decision of *Sadhana Lodh* (supra), any observation by the Apex Court to the effect that in view of the limited right of appeal provided to an insurer u/s 149(2) of the M.V. Act, interference with such an award is impermissible even if recognized principles for interference with such an award exists; for instance, when the Tribunal has acted without jurisdiction or in excess of its jurisdiction or in flagrant disregard of law or rules or procedure or in violation of the principles of natural justice occasioning failure to justice. Undoubtedly, a mere wrong decision by a Tribunal, which has the jurisdiction to decide, cannot be a ground for interference under Articles 226 and/or 227. The Apex Court observed in *Sadhana Lodh* (supra) that a mere wrong decision "without anything more" is not enough to attract jurisdiction of High Court under Article 226 of the Constitution. The expression "without anything more", used in *Sadhana Lodh* (supra), is, to my mind, of great significance. The decision in *Sadhana Lodh* (supra) has to be read in the background of the authorities discussed hereinbefore and when read in this light, it clearly follows that what the Apex Court has laid down in *Sadhana Lodh* (supra) is that a Writ Court

cannot convert itself into a Court of appeal and thereby enlarge the limited grounds on which the award can be impugned in the appeal by an insurer; but at the time, if the conditions precedent for exercise of powers under Article 226/227 exists, the same cannot be ignored merely because the State has not provided an unlimited right of appeal, for, doing so would amount to accepting a proposition that by providing a right of appeal, limited or otherwise, the Legislature can taken away the jurisdiction of the High Court under Article 226 and/or 227. No doubt, the writ jurisdiction shall be exercised, as laid down in *Mafatlal Industries Ltd. (supra)*, to effectuate the rule of law and not to abrogate it and while the powers under Article 226 cannot be circumscribed by any enactment, the legislative intent, as evidenced by the enactment, must be given due regard and the exercise of jurisdiction under Article 226 has to be consistent with the provisions of the enactment and not contrary thereto. In short, thus, when the M.V. Act prescribes a complete scheme for the relief of granting of compensation and circumscribes, with the help of the provisions, such as, Section 149(2), the insurer's right of appeal, the High Court cannot, in exercise of its jurisdiction under Article 226 and/or 227, convert itself into a Court of appeal and determine the concreteness of the decision; but when the Tribunal oversteps its jurisdiction or indulges in arbitrariness in granting compensation or it act in denial of the principles of natural justice or acts without jurisdiction or in flagrant disregard of the law or the procedure occasioning thereby failure of justice, interference in exercise of certiorari jurisdiction will not only be possible, but would become imperative, for, non-interference even in such cases, where the exercise powers under Article 226 and/or 227, which forms the basis structure of the Constitution. Such a course, as suggested by learned Counsel for the Respondents, would be contrary to the established principles governing the exercise of writ jurisdiction and can not, in any way, be described to be in tune with what *Sadhana Lodh (supra)* lays down.

50. It is true that a decision is an authority for what it actually decides and not what can be deducted from it. Though even obiter dictum of the Supreme Court is binding on all the Courts, the fact remains that to be a binding authority on any specific issue, the issue must be, at least, raised and answered directly or by implication. Reference may be made to *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, , wherein the Apex Court has observed, "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear". Reference may also be made to *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , wherein the Court has laid down, "Courts should not place reliance on decisions without discussing as to how the factual situation fits in which the fact situation of the decision on which reliance is placed." The Apex Court has explained the doctrine of precedent in *Krishena Kumar and Others Vs. Union of India and others*, , thus

"The doctrine of judicial precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in its." Clarifying the doctrine of stare decisis, the Apex Court in *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, held, "it is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "Law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while apply the decision to a later case, the Courts must carefully try to ascertain the true principle not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another*, this Court cautioned.

It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court. Divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.

51. Keeping in view the above fundamental principles of interpretation of the doctrine of judicial precedents, when I revert to the case of *Sadhana Lodh* (supra), I notice that the limited question raised in *Sadhana Lodh* (supra), was as to whether by taking recourse to Article 226/ 227, the High Court can interfere with the quantum of compensation awarded by the Tribunal merely on the ground of erroneous use of multiplier. It is in this context that *Sadhana Lodh* (supra) laid down that the writ Court cannot act like a Court of appeal, for, as held in *Surya Devi* (supra), assumes that the subordinate Court, which has the jurisdiction to decide the same erroneously and whether the decision is correct or incorrect cannot become the subject matter for assuming jurisdiction under Article 226/ 227 unless the well recognized conditions precedent for exercise of such powers exists on record.

14. It has been pointed out, at the time of hearing of the present writ petition, that the observations of the Division Bench in *Original Insurance Co. Ltd.* (supra) to the effect that the Court, in *Rejina Begum* (supra) and *Gauri Roy (Deb)* (supra), laid down that a writ petition would lie against an award of the Tribunal at the instance of the insurer on grounds other than those mentioned in Section 149 of the MV Act is factually incorrect inasmuch as no such law was laid down in either *Rejina Begum* (supra) or *Gauri Roy (Deb)* (supra). While dealing with this submission, what may be pointed out is that the Court, in *Rejina Begum* (supra), while considering the limitations imposed on the powers of the High Court to interfere with an award at the instance of the insurer under Article 226 and/or 227, has observed to the effect that what has been laid down in *Sadhana Lodh*

(supra) was that a mere wrong decision "without anything more" is not enough to attract the jurisdiction of the High Court under Article 226. The expression "without anything more", used in *Sadhana Lodh* (supra), was interpreted in *Rejina Begum* (supra) and while interpreting the expression, "without anything more", the Court, in *Rejina Begum* (supra), has pointed out that while codifying an enactment, the legislature may not be able to perceive all situations, which may arise and there may be cases, where the conditions precedent for the exercise of powers under Article 226 and/or 227 may be present and, in such cases, exercise of powers under Article 226 and/or 227 may be permissible.

15. True it is, as pointed out, on behalf of the insurer-Petitioner, that neither in *Regina Begum* (supra) nor in *Gauri Roy (Deb)* (supra), the Court held that on grounds other than those mentioned under Sub-section (2) of Section 149 of the MV Act, writ jurisdiction by the High Court can be exercised under Article 226 or 227. Notwithstanding the fact that the instances cited, in *Rejina Begum* (supra), were for the purpose of illustration that there may be cases, where conditions precedent for invoking jurisdiction under Article 226 and 227 may be present and interference with an award, in some exceptional circumstances, may become possible at the instance of the insurer, and it was, nowhere, held, in *Rejina Begum* (supra) and/or in *Gauri Roy (Deb)* (supra), that on grounds other than those mentioned under Sub-section (2) of Section 149 of the MV Act, the High Court's power under Article 226 and/or 227 would, ordinarily, be available, the fact remains that the effect of overruling of the two decisions, namely, *Rejina Begum* (supra) and *Gauri Roy (Deb)* (supra), by the Division Bench, in *New India Assurance Company Ltd.* (supra), is that the present writ petition, made under Article 227, which does not disclose obtaining of impugned award by fraud cannot be entertained at all.

16. Without, therefore, expressing any opinion on the merit of the present writ petition, the writ petition is dismissed as not maintainable on the ground that an award, at the instance of an insurer, cannot be entertained under Article 226 and/or 227 of the Constitution of India, at the instance of the insurer, except, perhaps, when the award is alleged to have been obtained by fraud.

17. In the result and for the reasons discussed above, this writ petition fails and the same shall stand dismissed.

18. No order as to costs.