

(2007) 10 GAU CK 0016

In the Gauhati High Court

Case No : MAC Appeal No(s). 94,114 and 115 of 2003

New India Assurance Co.Ltd.

APPELLANT

Vs

Beauti Nandi and Ors.(And other cases)

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173, 173

Citation : (2008) 5 GLR 799

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : A.Bhanu, A.K.Phukan, J.Mollah, K.Deka, Advocates appearing for Parties

Judgement

1. The challenge in these three appeals under section 173 of the Motor Vehicles Act, 1988 are to the common judgment and award dated 9.10.2002 passed in MACT Case No. 140/98, MACT Case No. 141/98 and MACT Case No. 142/98 by the learned Member Motor Accident Claim Tribunal, Kamrup, at Guwahati for an accident of a Truck bearing Registration No. AS25/6419 at Habigaon about 7.00 pm on way to Dhekiajuli due to rash and negligent driving of the Driver, as a result of the accident Bisu Nandi, Niranjana Karmakar, Suleman Badsa Ali Ahmed expired due to injuries sustained by them.

2. The present appellant had filed an application for reviewing the impugned common judgment and award dated 9.10.2002 to the learned Member. Motor Accident Claims Tribunal. The learned Member, Motor Accident Claim Tribunal allowed the review petition filed by the appellant and the common impugned judgment and award dated 9.10.2002 had been modified by passing the judgment and award dated 11.12.2002 (reviewed order dated 11.12.2002). In the present appeal, even though it has been mentioned in the Cause Title of the appeal that the appellant being aggrieved at and dissatisfied with the impugned common judgment and award dated 9.10.2002 and the reviewed order dated 11.12.2002 passed by the learned Member, Motor Accident Claims Tribunal,

Kamrup at Guwahati preferred the present appeal, on perusal of the grounds for appeals and the relief sought for in the present appeal, it is crystal clear that the present appeal is filed against the common impugned judgment and award dated 9.10.2002 which had already been reviewed and modified by passing the judgment and award dated 11.12.2002 (reviewed order). The memos of appeal of the present three appeals, i.e., MAC Appeal No. 94/03, MAC Appeal No. 114/03 and MAC Appeal No. 115/03 are pari materia and for easy reference to the relief sought for in the present appeals, the prayer portion of one of the appeals is quoted hereunder :

"In the premises aforesaid it is, therefore, prayed that your lordships may be pleased to admit this appeal call for records and issue notices upon the respondents to show cause as to why the impugned judgment and award dated 9.10.2002 passed by learned Member, Motor Accident Claims Tribunal, Kamrup at Guwahati in MAC Case No. 140/98 should not be set aside and/or be quashed and/or why any other order or orders should not be passed so as to give full relief to the appellant and upon cause or causes being shown and upon hearing the parties and on perusal of records be pleased to make the notices absolute. Further, your lordships may be pleased to pass such other order or orders as this honorable court may deem fit and proper and in accordance with law."

3. Heard Mr. A. Phukan, learned counsel appearing for the appellant and Mr. J. Mollah, learned counsel appearing for the respondent. The learned counsel appearing for the respondent had raised a preliminary point about the maintainability of the present appeal inasmuch as before filing these appeals the appellant had filed the review petitions before the learned Tribunal against the common impugned judgment and award dated 9.10.2002 and the learned Member Motor Accident Claim Tribunal as stated above had modified and reviewed the impugned common judgment and award dated 9.10.2002 by passing the new judgment and order dated 11.12.2002 (reviewed order) and as such the present appeals against the common judgment and award dated 9.10.2002 are not maintainable. Accordingly the present appeals are jointly taken up for deciding the preliminary point about the maintainability of the appeals by a common judgment and order.

4. Admittedly as discussed above, the impugned common judgment and award dated 9.10.2002 had already been reviewed and modified by passing subsequent judgment and award dated 11.12.2002 (reviewed order) on the application filed by the appellant to the learned Member, Motor Accident Claims Tribunal for reviewing the common judgment and award dated 9.12.2002. This being the situation, it required to see what would be the effect of allowing an application for reviewing the judgment and order by passing the reviewed order. The Apex Court in a catena of cases had discussed the effect of allowing an application for reviewing the judgment and order. So also this court and other High Courts had already discussed regarding this point. Some of the cases are (1) Sushil Kumar Sen v. State of Bihar, AIR 1975 SC 1185 ; (2) Kunhayammed v. State of Kerala,

(2000) 6 SCC 359; (3) *Rekha Mukherjee v. Ashis Kumar Das and Others*, (2005) 3 SCC 427 ; (4) *Naimuddin Shiekh v. Janatulla Mondal and Others*, AIR 1960 Assam 204.

5. The Apex Court in *Sushil Kumar Sen* (supra) clearly held that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. This being the situation, the appeal filed against the original decree is not maintainable inasmuch as the reviewed decree supersedes the original one and as such appeal could not be filed against the nonexistence original orders which has been superseded by the subsequent reviewed orders. Paras 2 and 3 of the order in *Sushil Kr. Sen* (supra) read as follows :

"2. It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one [see *Nibaran Chandra v. Abdul Hakim*, AIR 1928 Cal. 418 ; *Kanhaiya Lal v. Baldeo Prasad*, (1906) ILR 28 All 240; *Brijbasi Lal v. Salig Ram*, (1912) ILR 34 All. 282 and *Pyari Mohan v. Kalu Khan*, ILR 44 Cal. 1011 : AIR 1917 Cal. 29].

"3. The respondent did not file any appeal from the decree dated 18.8.1961 awarding compensation for the land acquired at the rate of Rs. 200 per katha. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated 18.8.1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated 26.9.1961 passed after review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the cross appeal. Since no appeal was preferred by the respondent against the decree passed on 18.8.1961 awarding compensation for the land at the rate so Rs. 200 per katha, that decree became final. The respondent made no attempt to file an appeal against that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again."

6. The Apex Court in *Kunhayammed v. State of Kerala* through Justice R.C. Lahoti (as then he was) observed that the review petition can be disposed of while pending appeal but if the review of a decree is granted before the disposal of the appeal against the decree, appeal will cease to exist and the appeal would be rendered incompetent. An appeal can not be preferred against the decree after review of the decree has been granted. This is because the decree reviewed get merged with the decree passed on review and the appeal to the superior court preferred against the earlier decree, the one before the review become

infructuous.

7. The Apex Court in *Rekha Mukherjee* (supra) had discussed number of earlier decisions and followed the ratio laid down by the Apex Court in *Sushil Kumar Sen* (supra). The Apex Court reiterated that when a review is made, the original decree ceases to exist as a result of the decision of the Judge to grant the application for review.

8. Paras 28 and 34 of the *Rekha Mukherjee* (supra) reads as follows :

"28. In *Sushil Kumar Sen*, Mathew, J, considered the effect of allowing an application for review of a decree holding that the same would amount to vacating the decree passed, stating: (SCC pp. 77677, paras 2 and 3)

"2. It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one (see *Nibaran Chandra Sikdar v. Abdul Hakim*, *Kanhaiya Lal v. Baldeo Prasad*, *Brijbasi Lal v. Salig Ram* and *Pyari Mohan Kundu v. Kalu Khan*)

3. The respondent did not file any appeal from the decree dated 18.8.1961 awarding compensation for the land acquired at the rate of Rs. 200 per katha. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated 18.8.1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated 26.9.1961 passed after review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the crossappeal. Since no appeal was referred by the respondent against the decree passed on 18.8.1961 awarding compensation for the land at the rate so Rs. 200 per katha, that decree became final. The respondent made no attempt to file an appeal against that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again."

"34. In *Gour Krishna Sarkar*, Asutosh Mookerjee, J, speaking for a Division Bench opined that the court is competent to determine whether when a review is granted, the case should be reopened in part or in its entirety, and that the view cannot be supported on principle that whenever an application for review is granted, the entire case must of necessity be reopened and reconsidered. It was observed that when a review is made, the original decree ceases to exist as a result of the decision of judge to grant the application for review."

9. On perusal of the reliefs sought for in the present appeals which is quoted above, it is crystal clear that the present appeals is against the original common

impugned judgment and award dated 9.10.2002 which ceased to exist as a result of allowing the application for review of the common judgment and award dated 9.10.2002 by passing the reviewed judgment and order dated 11.12.2002.

10. The Apex Court in *Krishna Priya Ganguly & Ors. v. University of Lucknow & Ors.*, (1984) 1SCC 307 held that a relief should be confined to those specifically prayed for in the writ petition. In *Krishna Priya Ganguly* (supra) writ petitioner merely prayed for a writ directing the State and Medical College to consider his case for admission but without any proper relief the High Court issued a writ of mandamus directing the College to admit him (writ petitioner) to the Post Graduate College. The Apex Court held that such direction to the college to admit him to the Post Graduate College would amount to granting a relief which the plaintiff never prayed to inasmuch as the prayer of the writ petitioner in the writ petition is only for a direction to consider his case for admission. The Apex Court in *State of Mysore v. G.N. Lingappa & Ors.*, 1969 SLR 709 (SC) held that the court cannot grant the relief in the writ petition in the absence of proper plea and any prayer to that effect. The Apex Court, further, in *Hindustan Petroleum Corpn. Ltd. v. Sunita Mehra & Ors.*, (2001) 9 SCC 344 held that the order not even challenged in the writ petitions cannot be quashed by the High Court in writ jurisdiction. Keeping in view of the decisions of the Apex Court in the cases discussed above, this court is of the considered view that in the absence of the prayer in these 3 (three) appeals for setting aside the reviewed judgment and award dated 11.12.2002, these appeals can not be treated as appeals against the reviewed judgment and award dated 11.12.2002 inasmuch as reviewed judgment and award dated 11.12.2002 can not be set aside in these appeals.

11. For the reasons discussed above, the present appeals against the common impugned judgment and award dated 9.10.2002 which ceased to exist as a result of allowing the application for review filed by the appellant by passing the reviewed judgment and order dated 11.12.2002 are not maintainable.

12. Accordingly these appeals are dismissed. Parties are to bear their own costs.