

(2006) 07 GAU CK 0009
In the Gauhati High Court
Case No : CRP No. 27 of 1999

New India Assurance Company Ltd.

APPELLANT

Vs

Aratibala Paul and Others

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1988 — Section 140, 140(2), 149(2), 166, 170

Citation : (2008) GLT 859 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

A.B. Pal, J.—By this application, under Article 227 of the Constitution of India the Appellant New India Assurance Co. Ltd. has called in question the correctness and legality of the judgment dated 4th September, 1997 of the Motor Accident Claims Tribunal, West Tripura, Agartala in Misc. (MAC) 58 of 1995 arising out of TS (MAC) 45 of 1994 whereby an amount of Rs. 50,000/- has been awarded to the claimants under "no fault liability" provision contained in Section 140 of the Motor Vehicles Act, 1988 (for short "the Act") as compensation for the death of one Badal Paul, who died on 06.12.1993 at the age of 23 years while traveling by TR-01-1218.

2. The facts and circumstances leading to the claim petition being not in dispute the questions raised in the present petition are purely on the jurisdiction of the learned Tribunal in awarding the compensation under "no fault liability" scheme.

3. Mr. D.K. Biswas, learned Counsel for the Appellant insurer points out that admittedly the accident had taken place on 06.12.1993 before Section 140 of the Act was amended by Act 54 of 1994, which was brought into force w.e.f. 14.11.1994 enhancing the amount of compensation in respect of death of any

person from Rs. 25,000/- to 50,000/-. As the said amendment has not been given retrospective effect, the learned Tribunal should not have awarded Rs. 50,000/- under the amended provision. His further submission is that though the amount of compensation being only Rs. 50,000/- is not so much important to justify the challenge to the judgment impugned, what is more significant is manifest error of law on the face of the record committed by the learned Tribunal totally ignoring the date of effect of the new amendment, which certainly calls for interference from the High Court.

4. A perusal of the Act 54 of 1994 whereby Sub-section (2) of Section 140 of the Act has been amended would show that the amended provision was intended to be brought into force w.e.f. 14.11.1994. It is a settled principle of interpretation of statute that when there is no express provision about the retrospective operation of any law, the same shall be deemed to have come into force prospectively or from a date specified or notified in terms of the Act, as the case may be. Every insurance policy for which proportionate premium is required to be paid in respect of any vehicle is issued keeping in view the statutory liability to be borne by the insurer in the event the vehicle insured is involved in any accident. A policy covering a third party risk is termed as "Act policy", which has to cover the liability specified by the Act. In the case at hand, the accident had taken place in 1993 when statutory liability to pay compensation under "no fault liability" scheme was only Rs. 25,000/- and obviously the policy covering third party risk in respect of the vehicle insured was issued keeping essentially in view the said amount only. The date of accident being the relevant date to determine the applicability of a particular provision, it has to be held that the amended provision of the Act, which came into force w.e.f. 14.11.1994 enhancing the amount from Rs. 25,000/- to Rs. 50,000/- has no manner of application and, therefore, the impugned judgment pressing into service the amended provision is certainly erroneous.

5. The next question raised relates to the policy itself, which according to the insurer did not cover the vehicle involved in the accident. Though admittedly the vehicle bearing the registration No. TR-01-1218 was involved in the accident, the contention advanced is that the said vehicle was stated to by the witnesses to be a Canter Bus. But the policy in question in relation to TR-01-1218 was of a TATA Tractor as would be apparent from the policy itself. As it is not in dispute that the vehicle in question was not a TATA Tractor, the insurer should not have been fastened with the liability to pay the compensation under the "no fault liability" scheme. After the impugned judgment was delivered the insurer preferred a review petition before the said Tribunal, which was, however, rejected with an observation that the vehicle bearing the same registration number might have been TATA Truck later converted into a Canter Bus.

6. Mr. Somik Deb, learned Counsel for the claimants-Respondents would submit that if it was the contention of the insurer that the policy did not cover the vehicle involved or there has been any breach of the policy, the remedy was an

appeal on that ground alone, not a petition under Article 227 of the Constitution. Whether the vehicle involved was a bus or a truck being essentially a question of fact, there is absolutely no scope for this Court under Article 227 of the Constitution to re appreciate the evidence, which would amount to sitting in appeal against the judgment impugned. Needless to say that Article 227 of the Constitution does not clothe the High Court with such power of appellate authority.

7. The third contention of the insurer is that the admitted factual situation would show that there was no motor accident on the date and time aforementioned leading to death of the said victim. It is not in dispute that when the said vehicle was on way to Teliamura, some extremists attacked the vehicle by opening fire. The victim Badal Paul received bullet injury, which was the cause of the death. As there was thus no accident arising out of the use of the vehicle contemplated by the statute, Mr. Biswas has submitted that a Tribunal should not have awarded any compensation even under "no fault liability" provision. The learned Tribunal has dealt with the question and observed that as the scheme u/s 140 of the Act has not been linked with any fault on the part of the driver, it is competent for a Tribunal to award compensation if the death is the result of the use of the vehicle.

8. This area as to when an incident of extremist attack and resulted injuries or death of persons traveling by a vehicle would fall within the purview of the Act has been addressed by the Apex Court in a line of decisions. Though the doctrine "dominant intention" in every such case holds the field, no straightjacket formula could be or should be devised as the factual situation is bound to vary from case to case. In passing the award by the judgment impugned, the learned Tribunal was not called upon to decide that question, which usually falls for consideration only after a full dressed hearing of a case u/s 166 of the Act. An award u/s 140 of the Act precedes such a trial and the order is made under the said scheme on materials available on record at that point of time. Mr. Somik Deb would strongly argue that in a proceeding under Article 227 of the Constitution this Court has no scope to go into the question in any manner. Agreeing with the submission and without further discussion on this issue, it can be safely asserted from the above that such a question cannot be decided by this Court in the present proceeding.

9. After having touched the issues raised in this petition the most important question which must winch to the fore is whether the insurer is at all permitted to raise all such questions, which fall beyond the permissible limits contoured in Section 149(2) of the Act.

10. "It is not in dispute that the right of appeal is a statutory right to the parties and where the law provides a remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by MACT. u/s 170 of the Act, an insurer has a right to file an appeal before the High Court on limited grounds available u/s 149(2). 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" as held by the Apex Court in *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, following a prior decision of the Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, dealing with the provisions of Sections 173 and 149(2) of the Act and the provisions of Articles 226 and 227 of the Constitution. What emerges from the above decision is that the limited grounds of appeal provided u/s 149(2) of the Act cannot be enlarged by instituting any proceeding under Article 226 or 227 of the Constitution and in that view of the matter, it would be seen that the grounds of challenge contained in the present petition except the ground on breach of the policy or applicability thereof do not fall within the ambit of Section 149(2) of the Act. But the decision of the Apex Court even after *Sadhana Lodh* (supra) and *Bijoy Kumar Dugar* (supra) has not closed the jurisdiction of the High Court to correct a serious error, which is manifest on the face of the record occasioning miscarriage of justice. Powers under Article 227 are thus unprecedented and all pervasive to prevent every occasion of miscarriage of justice as otherwise the Courts in the country would in every such occasion be powerless to see helplessly administration of justice coming to a grinding halt. As has been seen above, the amended provision of Section 140(2) of the Act enhancing the amount from Rs. 25,000/- to Rs. 50,000/-, came into force only from 14.11.1994, long before the date of accident. By failing to notice the date of effect of the said provision the Tribunal committed manifest error of law.

11. In a case such as this where a death had occurred when the victim was travelling by the vehicle which came under extremist attack and only Rs. 50,000/- was awarded by the Tribunal under "no fault liability" scheme, the question is whether even after deciding that a manifest error has been committed, it would be appropriate to interfere with the awarded amount. In a similar situation in *National Insurance Co. Ltd. Vs. Kusum Rai and Others*, the Apex Court was of the opinion that the insurer Appellant was not liable to pay the claimed amount as the driver was not possessing a valid licence, but then declined to interfere with the amount awarded considering the fact that the claimants came from a poor background and suffered great mental agony. The observation made in Para 17 of the judgment reads:

17. However, in this case the owner has not appeared. The victim was aged only 12 years. The claimants are from a poor background. They must have suffered great mental agony. Therefore, we are of the opinion that it may not be appropriate to push them into another round of litigation particularly when it may be difficult for them to secure the presence of the owner of the vehicle.

12. In the case on hand also the victim died at an age of 23 years and the claimants-Respondents came from a poor background. The case has been pending since 1993 when the accident had taken place. In a full proceeding u/s 166 of the Act all relevant aspects of such a case are gone into on the basis of the materials placed by the contending parties to decide whether going by the

circumstances of the case and applying the doctrine of "dominant intention", it can be held that the death had occurred in the present case, due to motor accident only. If so decided, the insurer would possibly be saddled with larger liability, much more than Rs. 50,000/-. In such an event, the excess amount paid u/s 140 of the Act may be adjusted from the final award. In view of this position, particularly when this award has been made u/s 140 of the Act, I am not inclined to interfere with the awarded amount.

13. In the result and for the discussions foregoing, this revision petition stands closed without any order as to cost.