(1981) 08 DEL CK 0009

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 41 of 1981

New India Insurance Co. Ltd. and Another — APPELLANT

Vs

Raj Rani Bhatia and Others — RESPONDENT

Date of Decision : 26-08-1981

Acts Referred:

Citation : (1981) 20 DLT 525

Hon'ble Judges : T.P.S Chawla, J

Bench : Single Bench

Advocate : P.K. Seth and N.C. Sikri, for the Appellant;

Judgement

T.P.S. Chawla, J.

(1) Mr. Ishwar Dass Bhatia is a practicing Advocate. His son aged 17 years was killed in an accident on 12th March 1978. Mr. Bhatia and his wife filed a petition before the Motor Accident Claims Tribunal for compensation. By an award dated 16th November 1978 they were awarded a sum of Rs. 12,000.00 as compensation with cost and interest at 6% per annum from the ''date of the award'' till the realisation of the amount.

(2) It appears that the Insurance company did not pay the amount awarded, and so a recovery certificate was issued. Thereafter, the Insurance company deposited a sum of Rs. 13,085.75 in the Treasury, and Mr. Bhatia was paid the same by a payment voucher. The payment voucher was dated 27th October 1979. On 25th November 1979. Mr. Bhatia and his wife moved an application for review of the award. The allegations in this application are extremely confused. It is alleged that the Insurance company deposited a sum of Rs. 15,000.00 which, it is now conceded, was not the fact. It is further alleged that when the award was announced both sides were under the impression that interest had been awarded from the date of filing the petition. The application then seems to say that after it was learnt that a sum of Rs. 15,000.00 had been deposited by the Insurance company, it was realised that the award had not awarded interest

from the date of the petition. As I have said, the allegations do not make much sense to me. and it is difficult to know what exactly went on in the mind of Mr. Bhatia However, the application went on to draw attention to section 110CC of the Motor Vehicles Act 1939, and in paragraph 11 it was specifically stated that the award ought to he amended so as to grant interest from the date when the petition was filed. This was also the prayer made in the application, although it was added that the rest of the amount deposited by the Insurance Company should be paid over to the applicants. This latter part of the prayer was based on the mistaken notion that the Insurance company had deposited more than Rs. 13,085.75.

(3) Notice of this application for review was issued to the Insurance company. By an order dated 22nd March 1980, the application was allowed by a new Presiding Officer and the award was modified to this extent that interest at the rate of 6% per annum was awarded from the date of the petition. Although in this order the judge also seems to have proceeded on the mistaken assumption that the Insurance company had deposited more than Rs. 13,085.75, it is clear to me from reading the order as a whole that the main ground on which he granted the review was that the award had not dealt with the question whether the claimants were entitled to interest u/s 110CC of the Motor Vehicles Act or "not. In particular, he said there are no such findings that the petitioner did not pursue the petition with due diligence''.

(4) For seven months thereafter the Insurance company did nothing. On 23rd October 1980 they applied for a certified copy of the order granting review. The present petition under Article 227 was filed by the Insurance company on 28th February 1981. It seeks to have the order granting the review quashed.

(5) Counsel for the petitioner has contended that the Tribunal had no power to review the award because no such power is granted by the Motor Vehicles Act. He has relied on Suraj Bhan Goel and Others Vs. Dhapo Devi and Others, , which was decided, by a single judge of this court. I do not accept this proposition. A division bench of this court has held in Metal Fabricators (Indw) v. B.D. Gupta and others, 1975 Lab. I.C. 1707, that every tribunal which is given power to decide has power to review because such a power is necessary to do complete and proper justice. The division bench relied on the full Bench judgment of the Punjab High Court in Jagir Singh Sobha and another v. Settlement Commissioner, Pepsu and others, AIR. 1959 Pun 457, which states the same proposition. The judgment of the single judge in Suraj Bhan Gael''s case must be deemed to have been impliedly overruled by the judgment of the division bench of this court. So, I hold that the tribunal had inherent power to review the award.

(6) Counsel for the Insurance company then contended that in the application for review the facts were deliberately stated in a garbled fashion so as to explain the delay in moving the application. I am ready to concede that the matters alleged in the application were not wholly true. But, I am not persuaded that there was any deliberate attempt to misstate them. I cannot see what could have been

gained by the applicants falsely alleging that a sum of Rs. 15,000.00 had been deposited by the Insurance company when in point of fact only Rs. 13,085.75 had been deposited. This is something which could have been verified straightaway from the record, and Mr. Bhatia, who, as I have said, is a practicing, lawyer, must have known it. I think, it only shows that the application was drafted without ascertaining the facts accurately and without exercising the necessary care. Mr. Sikri has said that, after the death of his son, Mr. Bhatia has been extremely disturbed and is unable to apply his mind properly to any matter. I can well believe that, because the shock of the loss his son must have been extremely severe. The judge primarily granted review on the legal ground that, at the time of making the award. Section 110CC had not been noticed. I think, on this ground the review was justified for in the award there is no reference to that section or any thing at all to show that it was kept in mind. In all probability, the judge who made the award, did not have his mind directed to that section. If he had intended to disallow interest from a date prior to the award, then the least one would have expected is for him to say that the delay in the proceedings was to the conduct of the claimants. He has said. nothing of that kind. Therefore, I think, it is clear that the judge who delivered the award failed to notice section 110GG and failure to notice a relevant provision of law is, to my mind, a valid ground for review.

(7) But, apart from these aspects of the matters, I am perfectly clear that this petition ought not to be allowed even on other grounds. Mr. Sikri has pointed out that an appeal would have laid against the order granting the review but was not filed presumably because it would have been barred by time. Counsel for the insurance company does not accept that an appeal would have been maintainable, and further contends that even supposing an appeal lay that does not bar a petition under Article 227 of the Constitution. I agree that notwithstanding that an appeal may lie against an order and has not been resorted to a petition under Article 227 may be entertained. However, the question whether the court should interfere in exercise of that power given by the Constitution is a very different one. There are numerous authorities which hold that the power under Article 227 should be exercised most sparingly and only in a glaring case of injustice. One such case, to which I was referred is Miss Maneck Custodiji Surjarji v. Serefazali Nawabali Mirza. Air 1976 S.C. 2445.

(8) In the present case, I think, justice requires that I should not interfere with the order granting the review. The amount awarded to Mr. Bhatia and his wife as compensation for the death of their son is ridiculously low. In fact, I find it incomprehensible that they did not file an appeal. Most certainly they were entitled to interest from the date when the petition was filed,unlessthe tribunal found that any delay in the proceedings was attributable to them. But there is no such finding. After the application for review- was granted on 22nd March 1980, they took nearly one year to move this court on 28th February 1981 for quashing that order. The delay must weigh against them. It may be that there are some small flaws here and there in the application for review and the order granting it

made by the judge; but justice has been done, and the conduct of the Insurance company is not such as would warrant interference under Article 227 of the Constitution. For all these reasons, this petition is dismissed. However in the circumstances of the case I make no order as to -costs.

(9) At the request of counsel for the petitioner it is clarified that interest will be payable in accordance with the order granting review only up to the date when the amount of Rs. 13,085.75 was deposited in the Treasury.