(2004) 02 KAR CK 0045

In the Karnataka High Court

Case No : C.R.P. No''s. 1022 and 1217 of 2003

Oriental Insurance Co. Ltd. APPELLANT

Vs

Basanagouda and Another RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 115
Motor Vehicles Act, 1988 — Section 149 (2), 166

Citation : (2005) 1 ACC 840 : (2004) ACJ 1652 : (2004) 3 CivCC 297 : (2005) 1 KarLJ 46 : (2004) 2 KCCR 1246 : (2004) 3 RCR(Civil) 846

Hon'ble Judges : S.R. Nayak, J;Ram Mohan Reddy, J

Bench : Division Bench

Advocate : B.V. Nagarathna and Sharmila Menezes, for the Appellant; Basavaprabhu S. Patil, Udya Holla, Chandra Shekar Patil and Nettar and Holla and Holla, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—Both the civil revision petitions are preferred by Oriental Insurance Co. Ltd. against the common judgment and order dated 5.2.2003 passed in Review Petition Nos. 55 and 54 of 2002 on the file of the Court of the Principal Civil Judge, Senior Division and M.A.C.T., Raichur (for short, ''the M.A.C.T.''). Hence both civil revision petitions were clubbed and heard together and they are being disposed of by this common judgment.

2. Civil Revision Petition No. 1217 of 2003 is directed against the judgment in Review Petition No. 55 of 2002 whereas Civil Revision Petition No. 1022 of 2003 is directed against the judgment in Review Petition No. 54 of 2002. Both the civil revision petitions are filed before this court u/s 115 of Civil Procedure Code, 1908. Review Petition Nos. 54 and 55 of 2002 were preferred by the insurance company before the M.A.C.T. under Order 47, Rule 1, Civil Procedure Code, 1908 seeking review of the judgment and award passed in M.V.C. No. 639 of 1998 and M.V.C. No. 640 of 1998, allowing the claim petition of the respondent herein filed

u/s 166 of the Motor Vehicles Act, 1988 (for short, ''the Act'') for compensation on the ground that awards were obtained by the claimants by playing fraud. There was delay in preferring the review petitions. Therefore, the insurance company had filed application seeking condonation of delay in preferring the review petitions. The respondents-claimants opposed the review petitions by filing statement of objections. The M.A.C.T. by the impugned judgment and order dated 5.2.2003, dismissed both review petitions on the ground of delay as well as on merits. The insurance company being aggrieved by the above judgment of the M.A.C.T. has preferred these civil revision petitions u/s 115 of the Civil Procedure Code, 1908.

3. We have heard Mrs. Nagarathna, learned counsel for the revision petitioners and Mr. Basavaprabhu S. Patil, learned counsel for the claimants-respondents.

4. At the threshold of the hearing, Mr. Basavaprabhu S. Patil, learned counsel for the claimants would contend that these CRPS are not maintainable in the light of the judgment of five-Judge Bench of this court in Union of India (UOI) and Others Vs. Mysore Paper Mills Ltd. and Others, , whereas, Mrs. Nagarathna, learned counsel for the revision petitioners would maintain that CRPS are maintainable in the light of the judgment of three-Judge Bench of the Supreme Court in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . Therefore, it becomes necessary for us to decide the question of maintainability at the threshold. Therefore, we heard the learned counsel for the parties on maintainability of civil revision petitions.

5. Mrs. B.V. Nagarathna, drawing our attention to what the Apex Court in para 31 has observed in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , would contend that since the impugned award obtained by the claimants is vitiated on account of fraud, the revision petitions filed by the insurance company against the order of the M.A.C.T. passed in review petitions are maintainable. Elaborating the contention, Mrs. Nagarathna would contend that since the procedure envisaged under the Civil Procedure Code, 1908, is applicable for adjudicating the rights of the parties under the Motor Vehicles Act, 1988, the legal remedies provided to the parties under the Civil Procedure Code, 1908, should be extended to aggrieved parties in working out their rights under the Motor Vehicles Act also.

6. Mrs. Nagarathna would submit that under Order 47, Rule 7, Civil Procedure Code, 1908, an appeal is provided against an order granting review, but no appeal is provided against an order of the court rejecting the review application and since the review petitions filed by the insurance company are rejected by the M.A.C.T., the insurance company cannot prefer appeals against the rejection orders and the only remedy available to it is to approach this court by way of revision u/s 115 of the Civil Procedure Code, 1908. Mr. Basavaprabhu S. Patil, per contra, would contend that the observation of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , could be considered to be an authority only to say that if an order made by a quasi-judicial forum or court is

vitiated on account of fraud, the aggrieved party can approach such judicial forum or the court, as the case may be, and seek review of such order, but the observations in para 31 of the judgment cannot be construed in such a way as to hold that even against the order of the M.A.C.T. rejecting the review petitions filed by the insurance company further remedy could be availed by the insurance company by way of revision u/s 115 of Civil Procedure Code, 1908.

7. Having heard the learned counsel for the parties, the contention put forth by Mrs. Nagarathna is not acceptable to us for more than one reason. It is true that it is well settled prince the Apex Court in para 31 in Nicolletta Rohtagi''s case, plea of law that if an order or decree is obtained by fraud from a court or Tribunal, the party aggrieved by such order or decree has inherent right to approach the same court or Tribunal and seek review of such order or the decree, as the case may be. In the instant case, the insurance company filed Review Petition Nos. 20 and 19 of 2001, subsequently renumbered as 55 and 54 of 2002 contending that the impugned award was obtained by claimants by playing fraud. At this stage itself, it needs to be noticed that review petitions are opposed by the claimants by contending that they are not maintainable. But, the learned Presiding Officer of the M.A.C.T. has rejected that contention of the claimants and held that the review petitions are maintainable.

8. In the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , on behalf of the appellant insurance company, it was contended that if there is a collusion between claimants and the insured or the insured does not contest the claim and the Tribunal does not implead the insurance company to contest the claim on grounds available to the insured or the persons against whom claim has been made, or in such a situation when the insurer files an application for permission to contest the claim on merit and the same is rejected or where the claimant has obtained an award by playing fraud, in such cases the insurer has a right of appeal to contest the award on merits and the appeal would be maintainable. In dealing with the above contention, the Apex Court in para 31 observed thus:

"(31) We have already held that unless the conditions precedent specified in Section 170 of the 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and further, the Tribunal does not implead the insurance company to contest the claim, in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the grounds available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against the award on merits, if aggrieved. In any case, where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in Sub-section (2) of Section 149 of the 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award."

9. In para 31 or any where else in the judgment in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , the Supreme Court has not spelt out kinds or nature of legal remedies an aggrieved person can avail in the event of his opponent obtaining a decree or award by playing fraud except stating that in such event, it is permissible for the aggrieved party to approach the same court or Tribunal which has passed such award or decree. That remedy was already availed of by the insurance company by filing review petitions under Order 47, Rule 1, Civil Procedure Code, 1908, before the M.A.C.T. Therefore, the judgment of the Supreme Court in Nicolletta Rohtagi''s case (supra), is no way helpful to the insurance company to contend that the civil revision petitions filed u/s 115, CPC are maintainable. On the other hand, the precise question whether the civil revision petition lies u/s 115, CPC to this court against the judgments and awards or orders made under various statutes including the Motor Vehicles Act, 1988 fell for decision-making before this court. A five-Judge Bench of this court having dealt with that question and considered number of judgments having bearing on the point in Union of India (UOI) and Others Vs. Mysore Paper Mills Ltd. and Others, , concluded that the M.A.C.T. cannot be regarded as a court for the purpose of Section 115, CPC and having so opined, the larger Bench held that civil revision petitions are not maintainable u/s 115, CPC in this court against the orders and awards passed by the M.A.C.T.

10. In Union of India (UOI) and Others Vs. Mysore Paper Mills Ltd. and Others, , the following question was referred to the larger Bench of five-Judges:

"Are the Tribunals established under the Motor Vehicles Act, the Karnataka Private Educational (Discipline and Control) Act, 1975 now the Karnataka Education Act, 1983 and the Railway Claims Tribunal Act, courts subordinate to the High Court for purposes of Section 115 of the Code of Civil Procedure?"

11. In para 40 of the judgment, the larger Bench answered the above question by holding thus:

"The Motor Accidents Claims Tribunal (M.A.C.T.) established under the Motor Vehicles Act, the Education Appellate Tribunal (E.A.T.) established under the K.P.E.I. (D&C) Act, 1975, now the Karnataka Education Act, 1983 and the Railway Claims Tribunal (R.C.T.) established under Railway Claims Tribunal Act, 1987 are not courts subordinate to High Court for the purpose of Section 115, Code of Civil Procedure. Accordingly, we answer the referred question in negative and hold that no revision is maintainable."

12. It is trite that we are bound by the law declared by the larger Bench. Be that as it may, it is not the contention of Mrs. Nagarathna that the opinion of the

larger Bench of this court in Union of India (UOI) and Others Vs. Mysore Paper Mills Ltd. and Others, , is contrary to the judgment of the Apex Court in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, or any other judgment of the Apex Court. No decision of the Supreme Court was brought to our notice which is contrary to the opinion handed down by the larger Bench of this court in the case of Mysore Paper Mills Ltd. (supra).

13. In conclusion, we should state that the civil revision petitions now filed are not maintainable and accordingly they are dismissed as not maintainable. However, we make it clear that this order shall not come in the way of the insurance company availing of any other legal remedies open to them, if any, in accordance with law.