
(2005) 11 GAU CK 0009
In the Gauhati High Court
Case No : WP (C) No. 7669 of 2005

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Krishna Kakati and Others

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149(2), 166, 170

Citation : (2006) 2 GLR 139 : (2005) 4 GLT 712 : (2004) 4 GLT 712

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : D. Baruah, M. Choudhury, R. Kaur and S. Dutta, for the Appellant;
None Appeared, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Heard Mr. S. Dutta, the learned Counsel, appearing on behalf of the writ petitioner Insurance Company.

2. The challenge made in this application filed under Article 226/227 of the Constitution of India, is an award dated 6.11.1999 passed by the leaned Member, MACT, Kamrup at Guwahati in MAC Case No. 71/1997.

3. Against the aforesaid impugned award, the petitioner earlier filed a civil revision petition being CRP No. 75/2000 under Article 227 of the Constitution of India. When the said revision petition was dismissed inter alia holding not to be maintainable vide judgment and order dated 20.1.2005, this present writ petition under Article 226/227 of the Constitution of India is filed challenging the same award, seeking to invoke the writ jurisdiction of the High Court.

4. The case of the petitioner, inter alia, is that the claimant respondent himself filed the claim case being MACT Case No. 71/97 before the MACT, Kamrup at Guwahati claiming compensation for the injuries sustained by him while the bus

No. AS 01/0658, in which he was the handyman, met with the accident on 8.9.1996. During the course of the trial, the learned Tribunal examined 4 witnesses including the claimant himself, whereas the Insurance Company/writ petitioner examined none. On consideration of the materials available on record, the learned Tribunal passed the impugned award dated 6.11.1999 awarding a sum of Rs.5 lakh along with interest @ 12% per annum with effect from 18.2.1997 till realization as compensation.

5. The basic case highlighted by the Insurance Company is that the learned Tribunal acted illegally and arbitrarily in awarding the compensation to the tune of Rs.5 lakh which is an exorbitant one that too without examining the doctor as a witness although the learned Tribunal took into consideration the necessary certificate issued by the doctor and as such it should be interfered with in exercise of the extra ordinary power of the High Court under Article 226 of the Constitution of India. It is submitted that dismissal of the earlier revision petition would not be a bar for exercising the extra ordinary jurisdiction of the High Court exercising power of judicial review.

6. At the outset, a question arose regarding the maintainability of this writ petition filed under Article 226/227 of the Constitution of India. Referring to two single Bench decisions of this Court as reported in 2005 (1) GLT 569 National Insurance Co. Ltd. and Ors. v. Gauri Roy (Deb) and Ors. and (2005) 1 GLT 1 Oriental Insurance Co. Ltd. v. Rejina Begum and Ors. the learned Counsel for the petitioner has submitted that the power of judicial review under Article 226 is very much there and the same being a basic structure of the Constitution, cannot be taken away in spite existence of statutory right of appeal u/s 166 of the Motor Vehicles Act and in such a situation, this petition under Article 226/227 of the Constitution of India is maintainable. The rider of law as enunciated by the Apex Court in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, will come into play, in view of the decision of this Court referred to above.

7. In Sadhana Lodh (supra), the Apex Court dealing with the maintainability of a writ petition against an award of MACT on the face of existence of statutory right of appeal at paragraphs 6, 7 and 8 held as follows:

6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the ground 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 the Tribunal. Section 149(2) of the Act see National Insurance Co. Ltd v. Nicolletta Rohtagi. 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 the High Court to entertain a petition under Article 227, of the Constitution. Even if where a remedy by way of an 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 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 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 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court u/s 115 CPC, 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 the High Court under Article 226 of the Constitution.

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

8. For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Articles 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law.

8. There is another Full Bench decision of this Court reported in 1992 (2) GLT 296 United India Insurance Co. Ltd. Regional Office, Guwahati v. Member, MACT, Lakhimpur and Ors. wherein the Full Bench of this Court has also held that the appeal of the Insurance Company against an award of the Tribunal is restricted to the defence as available u/s 149(2) of the Act. In such a case, the appeal of the Insurance Company is an appeal with limited grounds only. The Apex Court in *Sadhana Lodh* (supra) also indicated such a situation at paragraph 6 of the judgment.

9. Right of appeal is the creation of the Statute. The Statute creating such right of appeal can also restrict the grounds or regulate the procedure under what circumstances and in what events and grounds such an appeal would lie. The right of appeal by the Insurance Company against the award of the Tribunal as provided u/s 166 of the Motor Vehicle Act is a restricted one. Unless the Insurance Company reserves its right u/s 170 in the written statement or by filing separate application to that effect praying for reserving its right to contest

the claim on all or any available grounds and a specific permission, in writing, to that effect is given, but ground cannot be agitated in the appeal and the grounds as mentioned in Section 149(2) of the Act will only be available. Further, it is also the dictum of law that the Insurance Company is not permitted to oppose the quantum of compensation in each and every case. The right of appeal on restricted grounds u/s 149(2) of the Act available to the Insurance Company cannot be permitted to be enlarged in exercise of the power of judicial review under the Scheme of the Act,

10. Yet, we come across another decision rendered by the same learned Single Judge deciding *Rejina Begum (supra)*, decided on 18.3.2005, reported in (2005) 3 GLR 380 *Oriental Insurance Co. Ltd. v. Bina Bhattacharjee and Ors.* wherein at paragraph 8, it is held as follows:

8. It has also been agitated, at the time of hearing of the present writ petition, that the compensation awarded for the injuries sustained by the claimant is unreasonable and not sustainable under the law. While considering this aspect of the matter, it is pertinent to note that though the petitioner has challenged in its writ petition that the quantum of compensation is too high, what need to be noted, in this regard, is that an insurer cannot, as held in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, challenge, by way of a writ petition, an award given by a Tribunal on the mere ground that the compensation awarded is high or excessive, for, an erroneous decision, in the absence of any other ground, is not amenable to the writ jurisdiction under Article 226 and/or 227 of the Constitution of India. That the insurer, such as, the present petitioner, cannot challenge an award made by a Tribunal on the ground of quantum of compensation only cannot be disputed and has not, in fact, been disputed before me.

11. The aforesaid case (*Bina Bhattacharjee*) being a decision rendered in later point of time, it will have forceful effect then the earlier case decided by the same Single Judge in *Rejina Begum (supra)*, which was decided on 20.1.2005.

12. In view of the aforesaid discussions, I am constrained to hold, in view of the dictum of law laid down by Full Bench of this Court and the Apex Court, more particularly in *Sadhana Lodh (supra)*, this present application filed under Articles 226/227 of the Constitution of India against the award challenging the question (sic) the award is not maintainable.

13. In view of the above discussion, this writ petition stands rejected.

14. No costs.