
(2005) 02 GAU CK 0024

In the Gauhati High Court

Case No : Regular Second Appeal No. 46 of 2004

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Liansangpuii and Another

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1988 — Section 147, 149, 149(1), 149(2), 163A

Citation : (2006) 2 ACC 340 : (2007) ACJ 801 : (2005) 2 GLR 438

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : S.N. Meitei, for the Appellant; M. Guite, for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—Heard Mr. SN Meitei, learned counsel for the petitioner and Mr. M. Guite, learned counsel appearing on behalf of the respondents.

2. This revision petition is filed by the Insurance company and it is directed against the judgment and order dated 6.2.2004 passed in MACT Case No. 6/2002 wherein the learned Tribunal had awarded compensation of Rs. 11,62,948 and further directed the Insurance Company, i.e., the present petitioner to pay the said awarded amount of compensation with interest at the rate of 9% per annum from the date of filing claim petition till realisation from the insurance company/ present petitioner.

3. The following short facts will suffice for disposing of the present revision petition :

One Ngurthangi, met with a motor accident on 15.8.2000 in between Aizawl Tuirial. The offending Maruti. Taxi, bearing registration No. MZ-01-A/8526 is admittedly insured with the present petitioner/ Insurance company. For that accident, respondent No. 1, Miss Liansangpuii and three others, filed a claim

petition being MACT case No. 6/2002 for claiming compensation for the death of Smt. Ngurthangi, against the present petitioner and respondent No. 2 in the Court of Member, Motor Accident Claims Tribunal. Aizawl District, Mizoram. The learned Tribunal finally disposed of the said MACT case by passing the impugned judgment and award dated 6.2.2004 awarding compensation of Rs. 11,62,948 against the present petitioner. The petitioner being aggrieved by the impugned judgment and award dated 6.2.2004, filed this present revision petition.

4. Insurance company, i.e., the insurer has a very limited ground for defence in a claim for a motor accident involving the motor vehicle, which is insured with the Insurance Company. The limited ground and limited defence are mentioned in Section 149(2) of the MV Act. The MV Act is a self contained one. The Insurance Company cannot enlarge the grounds and defence for resisting the claim without taking necessary permission u/s 170, of the MV Act. In the absence of permission u/s 170 of the MV Act, the Insurance Company has to confine its ground and defence under Clause (2) of Section 149 of the MV Act. In the absence of necessary permission u/s 170, of the MV Act, the Insurance Company has to file appeal against the judgment and award of the Tribunal u/s 173 of the MV Act only on the limited grounds mentioned u/s 149(2) of the MV Act, the same is quoted hereunder :

"149(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and defend the action on any of the following grounds, namely :

(a) That there has been breach of a specified condition of the policy, being one of the following conditions, namely :-

(i) a condition excluding the use of the vehicle -

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle ; or

(d) without side car being attached where the vehicle is a motor cycle ; or

(ii) a condition excluding driving by a named person or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification ; or

(b) that the policy is void on the ground that it was obtained by the non-

disclosing of a material fact or by a representation of fact which was false in some material particular."

5. The Apex Court in the case of Shankarayya and Anr. v. United India Insurance Co. Ltd. and Anr. reported in (1998) 3 SCC 140, held that-Joining of insurer by claimants themselves in the claim petition with a view to thrust statutory liability on it would not amount to impleading the insurer u/s 170 of the MV Act. Paragraph 4 of the SCC in the case of Shankarayya and anr. (supra) is quoted hereunder :

"4. It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No. 1, Insurance Company in the claim petition but that was done with view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company, which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case. Respondent No. 1. Insurance company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

The Apex Court in the case of Rita Devi (Smt.) and Anr. v. New India Assurance Co. Ltd. and Anr. reported in (2000) 5 SCC 113, held that -appeal against such award on the ground of the case not being covered u/s 163A, filed by an insurer who had not obtained the leave of Tribunal u/s 170 of the MV Act is not maintainable. Para 19 of the SCC in the case of Rita Devi (Smt.) (supra) is quoted hereunder :

"19. This leaves us to consider the second point raised before us by the counsel for the appellant. It is argued on behalf of the appellants that the appeal preferred by the Insurance Company purported to be u/s 173 of the Motor Vehicles Act was not maintainable because prior permission of the Court as required was not obtained by the appellants. In support of this contention of the appellants, reliance is placed on a judgment of this Court in the case of Shankarayya v. United India Insurance Co. Ltd. In the said judgment a Division Bench of this Court held (SCC Headnote) :

"The Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose the Insurance Company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed,

the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent 1 Insurance Company in the claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company, which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently it must be held that on the facts of the present case, respondent 1 Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

6. The Apex Court in the case of Chinnama George and Others Vs. N.K. Raju and Another, held that, it cannot permit the insurer the right to defend or appeal on grounds not available to it under the law - Insurer cannot be allowed to make a mockery of the provisions u/s 149(2) by associating in its appeal the owner or driver of the motor vehicle concerned, when such owner or driver is not an aggrieved person. Para 10 of the SCC in the case of Chinnama George (supra) is quoted hereunder :

"10. There is no dispute with the proposition so laid by tills Court. But the insurer cannot maintain a joint appeal along with the owner or the driver if defence on any ground u/s 149(2) is not available to it. In that situation a joint appeal will be incompetent. It is not enough if the insurer is struck out from the array of appellants. The appellate court must also be satisfied that a defence, which is permitted to be taken by the insurer under the Act was taken in the pleadings and was passed before the Tribunal. On the appellate court being so satisfied the appeal may be entertained for examination of the correctness or otherwise of the judgment of the Tribunal on the question arising from/relating to such defence taken by the insurer. If the appellate court is no satisfied that any such question was raised by the insurer in the pleadings and/or was pressed before the Tribunal, the appeal filed by the insurer has to be dismissed as not maintainable. The court should take care to ascertain this position on proper consideration so that the statutory bar against the insurer in a proceeding of claim of compensation is not rendered irrelevant by the subterfuge of the insurance company joining the insured as a co-appellant in the appeal filed by it. This position is clear on a harmonious reading of the statutory provisions in Sections 147, 149 and Sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer."

7. The Apex Court in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, held that appeal u/s 173 filed by the insurer cannot be enlarged by filing writ petition under Articles 226 and 227 of the Constitution of India for challenging the judgment and award of the Tribunal. The ratio laid down in Sadhna Lodh (supra) by the Apex Court is that the Insurance Company cannot enlarge the defence and reasons for challenging the impugned judgment and

award of the Tribunal by filing writ petition under Articles 226 and 227 of the Constitution of India without following the procedures prescribed u/s 173 of the MV Act. Paras 5 and 6 of the SCC in the case of *Sadhna Lodh (supra)* is quoted hereunder ;

"5. However, learned counsel for the respondent argued that since an insurer has limited grounds available u/s 173 of the Act, it is open to an insurer to file a petition under Articles 226/227 of the Constitution.

6. The right of appeal is a statutory right and where the law provides 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 the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and 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 (see *National Insurance Co. Ltd. v. Nicolletta Rhotagi*). 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 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."

8. In the instant case also Insurance Company without following the procedures prescribed u/s 170 of the MV Act filed this present Civil Revision Petition challenging the impugned judgment and award of the Tribunal on merit and also the quantum of compensation awarded by the learned Tribunal in the impugned judgment and award. This is forbidden inasmuch as this revision petition shall make the provisions of Section 149(2) and Section 170 of the MV Act nugatory. Mr. M. Guite learned counsel for the respondents cited decision of this Court in the case of *National Insurance Co. Ltd and Anr. v. Sukla Debnath and Ors.* reported in 2004 (1) GLT 497, wherein it is held that categorical administrative

mandate contained in Section 149 of the MV Act and state of law petitions filed u/s 115 CPC is not maintainable. I am in respectful agreement with the decision of this Court in the National insurance Co. Ltd. (supra).

9. From careful perusal of the grounds mentioned in the present revision petition, it is crystal clear that Insurance Company without taking the necessary leave u/s 170(2) of the MV Act challenged the judgment and award of the learned Tribunal dated 6.2.2004 on merit and also quantum of compensation awarded by the learned Tribunal. This revision petition is nothing but an appeal against the judgment and award of the learned Tribunal dated 6.2.2004 passed in MACT Case No. 6/02 in disguise of revision petition.

For the reasons mentioned above this revision petition is not maintainable and accordingly, it is dismissed. No order as to costs.