
(2007) 03 AHC CK 0191
In the Allahabad High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Manju and Others

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 24, 25, 3
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149, 170, 173, 175

Citation : (2007) ACJ 1538 : (2007) 4 ADJ 101 : (2007) 2 AWC 1927

Hon'ble Judges : Pankaj Mithal, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This appeal is arising out of the judgment and award dated 23.11.2006 passed by the learned Judge, Motor Accidents Claims Tribunal, in Motor Accident Claim Petition No. 676 of 2004.

2. Right to appeal of an aggrieved from the order of the Tribunal is available u/s 173 of the Act. The dispute in respect of the claim of compensation was contested between the claimants and the owner of the vehicle and ultimately the award was passed in favour of the claimants to be paid by the appellant insurance company on behalf of the owner.

3. In the court below an application was filed by the appellant insurance company herein, u/s 170 of the Motor-Vehicles Act, 1988 (hereinafter called "the Act") taking a plea that the owner of the vehicle is in collusion with the claimants, which was dismissed on 15.11.2006 having no materials. No appeal nor any other proceeding challenging such order was made by appellant herein. But appeal is preferred from the award. As and when it was pointed out by this Court, the learned Counsel appearing for the appellant wanted leave to incorporate the date of the order in the memorandum of appeal, when the court was pleased to grant permission only for the sake of formality. However, even thereafter a wrong date of the order being 25.11.2006 has been incorporated in

the place and instead of 15.11.2006. In any event, let us construe that present appeal has been made from both the award dated 23.11.2006 and also the earlier order dated 15.11.2006 passed by the learned Judge, to avoid hypertechnicality alone.

4. Now let us consider whether appeal on behalf of insurance company is maintainable or not? Since an interesting question cropped up and the contesting parties are agreeable in the hearing of the appeal on the informal papers having involvement of the question of law, we have called upon them to proceed with the appeal. The learned Counsel appearing for the respondents contended that the case of the appellant is squarely covered by the various recent judgments.

5. According to us, the scope and ambit of preferring an appeal by the insurance company from an order of rejection passed by the court below u/s 170 of the Act is very limited because an insurance company is an agent of the insured, i.e., principal, the owner of the vehicle. It has no independent locus standi. An agent will abide by the contractual obligations between it and its principal. He has no separate entity unless and until the relevant statute is permitting such agent to proceed before the court of law independently. According to law, if it satisfies the court about accrual of its independent right u/s 149(2) of the Act, then only right of appeal exists but not otherwise. Relevant part of the section is quoted hereunder:

(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 to defend the action on any of the following grounds, namely:

(a) that there has been a 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 persons 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

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

Upon going through the memorandum of appeal, we find that no ground has been taken u/s 149(2) of the Act, which can call for interference of this Court. The only specific ground has been mentioned therein that the court below illegally and arbitrarily rejected the application of the appellant insurance company u/s 170 of the Act, on the objection of the claimants on erroneous grounds, which is not sustainable in the eyes of law and liable to be set aside. The appellant insurance company is entitled for the benefit of Section 170 of the Act.

6. Therefore, preference of appeal on the part of the insurance company is not arising out of Section 149(2) of the Act but from the refusal of order u/s 170 of the Act after passing the award in favour of the claimants.

7. In *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, , three-Judge Bench of the Apex Court held that unless the conditions precedent specified in Section 170 of the 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 ground 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 an 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 the appeal on the grounds specified in Sub-section (2) of Section 149 of the Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead 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 case, it is open to an insurer to apply to a Tribunal for rectification of the award. For aforesaid reasons the court held that even if no appeal is preferred u/s 173 of the Act by an insured against the award of Tribunal, it is not permissible for the insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle. The aforesaid case was followed by another three-Judge Bench of the Supreme Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, and held that even where the remedy by way of an appeal has not been provided for against the order and judgment of the District Judge, the remedy available to the aggrieved person is

to file a revision before the High Court u/s 115 of the Civil Procedure Code. Where remedy for filing a revision before the High Court u/s 115 of the CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution of India would lie and not under Article 226 of the Constitution. Where the State legislature has barred the remedy of filing a revision petition before the High Court u/s 115, 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. Supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or the Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less an error of law. While exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or the Tribunal purports to have passed the order or to correct errors of law in the decision. In deciding such question the court held that u/s 173 of the Act an insurer has right to file an appeal before the High Court on limited grounds available u/s 149(2) of the Act. The Supreme Court reiterated the fact when the insurer was allowed to contest the claim petition then he has a right to appeal like earlier judgments. Ratio of National Insurance Co. Ltd. v. Nicolletta Rohtagi (supra), was again followed by a Division Bench of the Supreme Court in R. Mannakatti v. M. Subramanian 2006 ACJ 862 (SC). There it was held that since the owner of the vehicle contested the claim of the appellants, the insurer could not prefer an appeal, even if the owner of the vehicle joined him as a party-appellant. We have to go by the latest settled position of law.

8. According to us, an appeal or review or revision from the original order cannot be held to be an inherent right but statutory right. Unless the statute prescribes, no such right can be available for any person to proceed accordingly. In the instant case, a cryptic application was moved by the insurance company before the Tribunal making reference of collusion between the claimants and the insured without any supporting materials. The same was dismissed on such ground on 15.11.2006. Therefore, there is no infirmity in the order, which can call upon any court to interfere. Possibly the insurance company has understood the position having well equipped legal infrastructure unlike a rustic villager. It waited till the award was passed and when found responsible on behalf of the owner by the award, preferred the appeal from both the order and the award being forgetful that in case of rejection u/s 170 of the Act, the appeal lies, provided the order of rejection establishes cause u/s 149(2) of the Act. No such case has been made out in the appeal, excepting the ground of illegal and arbitrary refusal in passing the order. Therefore, it cannot take the recourse of remedy of appeal u/s 173 of the Act.

9. Now the question is, whether any other remedy is available to the insurance

company or not? In *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd.*, Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, it was held that where substantive law demands justice for a party aggrieved and the statute has not provided the remedy, it is the duty of the court to devise procedure by drawing analogy from other systems of law and practice. In *Dhannalal Vs. Kalawatibai and Others*, , it was held when the statute does not provide the path and precedents abstain to lead, then sound logic, rational reasoning, common sense and urge for public good play as guides of those who decide. Wrong must not be left unredeemed and right not left unenforced.

10. According to us, Section 115 of the CPC says that High Court may call for the records of any case, which has been decided by any court subordinate to such High Court and in which no appeal lies thereto on certain grounds. Subordination of courts has been prescribed u/s 3 of the Civil Procedure Code. It speaks that for the purpose of this Code, the District Court is subordinate to the High Court and every civil court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court. Learned Counsel appearing for the appellant relied upon a judgment in *State of Mysore v. K.L. Subbanna* AIR 1974 Karnataka 109. Although the judgment is a single Bench judgment and very cryptic in nature, but since the court held that Motor Accidents Claims Tribunal is not a court subordinate to the High Court within the meaning of Section 115 of the Civil Procedure Code, he relied upon the persuasive value of such judgment. Against this background, we have gone through *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, to understand the availability of forum for revision u/s 115 of the Civil Procedure Code. It was categorically held therein, which we repeat, that if remedy of appeal is not available, the remedy for filing revision before the High Court u/s 115 of the CPC is available unless it was expressly barred by a State enactment, only in such a case a petition under Article 227 of the Constitution would lie. However, when we consider Section 175 of the Motor Vehicles Act, 1988, we find that there is a bar on jurisdiction of civil courts. Therefore, we are of the view that if the jurisdiction of the civil courts is barred u/s 175 of the said Act and a list of subordinate courts is given u/s 3 of the CPC there is no necessity of stretching the judicial opinion by taking a view about the possibilities of Section 115 of CPC in case there is no scope of appeal. However, we have gone through *Uttar Pradesh Motor Vehicles Rules, 1998* whereunder in the definition clause under Rule 2 (i) "Act" means the Motor Vehicles Act, 1988 and the other is *U.P. Motor Accidents Claims Tribunal Rules, 1967*, wherein under Rule 2 (a) "Act" means the Motor Vehicles Act, 1939 with a footnote that the same is replaced by a new Motor Vehicles Act, 1988. Rule 221 of the earlier and Rule 21 of the later speak following:

221. CPC to apply in certain cases.-The following provisions of the First Schedule to the Code of Civil Procedure, 1908 shall so far as may be apply to proceedings before the Claims Tribunal, namely, rules 9 to 13 and 15 to 30 of Order V; Order IX, rules 3 to 10 of Order XIII; rules 2 to 21 of Order XVI; Order XVII; and rules

1 to 3 of Order XXIII.

21. CPC to apply in certain cases.-The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall, so far as may be apply to proceedings before the Claims Tribunal, namely, Order V, rules 9 to 13 and 15 to 30; Order IX; Order XIII, rules 3 to 10; Order XVI, rules 2 to 21; Order XVII and Order XXIII, Rules 1 to 3.

11. Thus, the provisions of Section 115, CPC have not been made applicable to the proceedings before the Tribunal and as such remedy of revision appears to be barred. However, the judgment of State of Mysore v. K.L. Subbanna AIR 1974 Kant 109, was considered by a Division Bench of Karnataka High Court in a reference case reported in Noreen R. Srikantaiah v. L. Dasarath Ramaiah 1985 ACJ 628 (Karnataka). So far as applicability of Section 115 of CPC is concerned, the Division Bench held whether the Tribunal is court or not, that will be understood not by the nomenclature but by the judicial power. If the judicial power vested with it akin to a civil court then such Tribunal can be construed as court subordinate to High Court. Functions of a Judicial Officer, if discharges, as the Presiding Officer of such Tribunal cannot be construed as persona designata. Ultimately the court held as follows:

(12) In view of the foregoing, we hold that Motor Accidents Claims Tribunal is a court subordinate to the High Court within the meaning and for purposes of Section 24 of the Civil Procedure Code. Transfer of a case from one Tribunal in the State to another is permissible.

12. Hence, it is crystal clear that the Division Bench considered the question from the point of view of Section 24 of CPC that too on a context that there is no distinction on the concept of a court between Section 24 and Section 25 of Civil Procedure Code. At the time of consideration the Bench relied upon the judgment reported in Bhagwati Devi v. I.S. Goel 1983 ACJ 123 (SC). In Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, it was held by the Supreme Court in the context when a remedy u/s 115 of CPC was chosen by an aggrieved that if there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted, it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate court. In a reference case as reported in Afsari Begum v. Oriental Fire & Genl. Ins. Co. Ltd. 1979 AWC 438, a Division Bench of the High Court of Allahabad relied upon the following piece of observation of Hon''ble Supreme Court in the earlier matter:

Section 115 of the CPC circumscribes the limits of the jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising powers conferred by the statute, basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense.

13. Ultimately, on the aforesaid observation it was held by the Division Bench that the Claims Tribunal being a civil court is amendable to the revisional jurisdiction of the High Court u/s 115 of Civil Procedure Code. In *Anirudh Prasad Ambasta and Others Vs. State of Bihar and Another*, a Full Bench comprising three Judges of the then Ranchi Bench of Patna High Court held again on the basis of the judgment in *Bhagwati Devi* 1983 ACJ 123 (SC), that the District Judge, who functions as a Claims Tribunal, is not only within the administrative control of the High Court but also subordinate to it u/s 115 of the Civil Procedure Code. Ultimately it was held, if according to the direction in the earlier case the Claims Tribunal in any district has transferred claims cases to civil courts, it must forthwith recall such cases and dispose of in accordance with law. However, the above Full Bench decision of Patna High Court in *Anirudh Prasad Ambasta and Others Vs. State of Bihar and Another*, was considered in *Union of India (UOI) and Others Vs. Mysore Paper Mills Ltd. and Others*, and held not helpful in view of the distinguishing feature in its paras 19, 20 and 21, as under:

(19) On the basis of the decision in *State of Haryana v. Darshana Devi* 1979 ACJ 205 (SC), the Supreme Court in *Bhagwati Devi v. I.S. Goel* 1983 ACJ 123 (SC), held that District Judge functioning as Claims Tribunal under the M.V. Act is a court for the purpose of Section 25, Civil Procedure Code. That case was decided on the basis of Section 25, Civil Procedure Code, which enables the Apex Court to direct that any suit, appeal or other proceedings be transferred from a High Court or other civil court in one State to a High Court or other civil court in any other State. The said ruling has been relied upon by the Division Bench of this Court in *Noreen R. Srikantaiah's* case 1985 ACJ 628 (Karnataka), to hold that M.A.C.T. is a court subordinate to High Court for the purposes of transfer u/s 24, CPC overruling the decision in *Prabhatsing Nathubhai Mahida Vs. Shantilal Nagjibhai Thakore*, Therefore, on the basis of the decision of that Division Bench it cannot be held that Claims Tribunal while disposing of the claims acts as a court. It will be appropriate to quote para 10:

However, *Bhagwati Devi's* case 1983 ACJ 123 (SC), now puts the point outside the pale of controversy. The matter arose in the context of the power of the Supreme Court u/s 25 to transfer suits and other proceedings, inter alia, from one "civil court" in one State to the other "civil court" in any other State. There is no distinction in the concept of a court between Section 24 and Section 25, Civil Procedure Code. However, the requirement of element of subordination envisaged in Section 24 so as to render the power u/s 24 exercisable is, understandably, not in Section 25. If, for purposes of Section 25 a Motor Accidents Claims Tribunal is a "civil court", it follows, a fortiori, that the Tribunal is a "court", for the purpose of Section 24 as well. It is in this context that the pronouncement in *Bhagwati Devi's* case is instructive on the aspect now under consideration....

(20) Under the circumstances, question as to whether District Judges as Members of the M.A.C.T., would be court subordinate to High Court had not come

up for consideration specifically before the Apex Court. In *State of Haryana v. Darshana Devi* 1979 ACJ 205 (SC), the Supreme Court has held that the provisions of Order 33, Rule 1, Civil Procedure Code, would be applicable to the proceedings under M.A.C.T. and in *Bhagwati Devi v. I.S. Goel* 1983 ACJ 123 (SC), the Apex Court has held following *Darshana Devi*'s case that the District Judge as Claims Tribunal under the M.V. Act is a court for the purposes of Section 25, Civil Procedure Code.

(21) Section 173 of the M.V. Act provides for appeal to High Court by any person aggrieved by an award of the Claims Tribunal and appeal is barred only where the amount in dispute in the appeal is less than ten thousand rupees and intention of the legislature is to avoid any further appeal or revision so as to give finality to the award passed by the Tribunal. Therefore, the above said decisions would not be helpful to contend that an order passed by M.A.C.T., is revisable u/s 115, Civil Procedure Code. The Full Bench decision in *Anirudh Prasad Ambasta and Others Vs. State of Bihar and Another*, is also based on the said decisions and as such it is not helpful. Accordingly, we hold that M.A.C.T. is not a court subordinate to High Court so as to maintain a revision petition u/s 115, Civil Procedure Code. All the decisions of this Court taking the contrary view are consequently overruled.

14. So far as *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, is concerned, the same has also been considered therein and held not applicable in the case for the following:

(26) The decision of the Supreme Court in *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, is also not applicable in the present case. The Apex Court was considering the question whether the High Court can interfere with the order of the appellate authority under Articles 226 and 227 of the Constitution of India when a petition for revision u/s 115 of the CPC against the same order had already been dismissed by that High Court. The Supreme Court, on consideration, held that in view of the filing of the revision petition, the writ petition under Articles 226 and 227 of the Constitution was not maintainable.

15. In view of the aforesaid circumstances, we have no other alternative but to follow the latest Full Bench judgment of a High Court consisting of five Judges. As soon as such Full Bench has made a distinguishing feature of *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, being the plinth of the earlier Division Bench judgment of this High Court in *Afsari Begum* 1979 AWC 438, the same cannot be held to be a good law but per incuriam in nature.

16. It is further significant to note that the judgment, which has been relied upon by this Court, was also relied upon by the Full Bench of Karnataka High Court as above, holding a similar stand in para 24 therein as under:

(24) In the case of *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, the Apex Court was dealing with a case wherein the insurer had filed a writ petition against the order of the Motor Accidents Claims Tribunal. In that

case, Motor Accidents Claims Tribunal had awarded a sum of Rs. 3,50,000 for the death of the appellant's son. The said order was challenged by the insurer by filing a writ petition before the High Court and the learned single Judge dismissed the writ petition. Thereafter, the insurer preferred a Letters Patent Appeal before the Division Bench and the Division Bench allowed the appeal reducing compensation amount to Rs. 3,00,000. The same was challenged before the Apex Court. The Supreme Court while considering Sections 173 and 149(2) of the Motor Vehicles Act, observed that "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". It was further observed that "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, Civil Procedure Code. Where the remedy for filing a revision before the High Court u/s 115, CPC has been expressly barred by a State enactment, only in such a case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution". The Supreme Court allowed the appeal and set aside the judgment and order. So the petitioner cannot take advantage of this case nor it is applicable to the facts of the present case as the order passed by the Tribunal is not revisable u/s 115 of Civil Procedure Code.

17. Ultimately the Full Bench of Karnataka High Court held that the Motor Accidents Claims Tribunal under Motor Vehicles Act is not a court subordinate to the High Court u/s 3 of CPC but a Tribunal for the purpose of invocation of Section 115 of Civil Procedure Code.

18. Therefore, on the above analysis we are of the view that either the appellant insurance company can go for rectification of the award if it is victim of any collusion before the court by establishing such fact or it can take out an application under Article 227 of the Constitution before the High Court from the order only for the purpose of determination whether the Tribunal proceeded within the parameters or not. An appeal cannot be entertained.

Hence, the appeal is dismissed being not maintainable.

No order is passed as to costs.

However, it is clarified hereunder that we have not considered the merit.

Pankaj Mithal, J.

19. I agree.