
(2008) 08 AHC CK 0280
In the Allahabad High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Motor Accident Claims Tribunal and Others		RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2010) ACJ 1491 : (2009) 1 AWC 358

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Bharati Sapru, J.—Heard Sri Manish Goyal learned Counsel for the petitioner and Sri Santosh Kumar Singh, who has appeared on behalf of the respondents No. 2 to 4.

2. This petition has been filed by the petitioner insurance company seeking a direction to set aside the Judgment and order dated 31.5.2008, passed by the respondent No. 1 in Misc. Case No. 5 of 2007 arising out of M.A.C. No. 61 of 2004. The second prayer is that order or direction may also be issued setting aside the judgment and award dated 23.9.2006, passed by the respondent No. 1 in M.A.C. No. 61 of 2004 and the third prayer is that the respondent No. 1 be restrained from releasing the amount of compensation alongwith interest in favour of the respondents No. 2 to 4 on the basis of the judgment and award dated 23.9.2006.

3. The facts of the case are that a claim petition was filed by the respondents alleging that an accident took place on 13.4.2004 when the deceased was going on a Motor Cycle No. UP 14-J-8083 from Baghpat to his village alongwith Jai Pal Singh, the Motor Cycle was hit by Car No. DL-1CF 2901 and on account of the accident, one person died and Jai Pal Singh received injuries.

4. A claim for compensation was made and an award was passed on 23.9.2006

finally by which Rs. 5,19,616 was allowed in favour of the claimant-respondents alongwith interest at the rate of 6% p.a.

5. After the award was delivered, the petitioner insurance company received a complaint from one Har Pal Singh resident of the village Bamnoli P.S. Deoghat district Baghpat to the effect that claim petition had been filed fraudulently on the basis of false representation against the car in collusion with its owner and in fact no accident had taken place with the car that had been insured by the petitioner.

6. It is the petitioner's case that upon receiving the complaint, the petitioner engaged an independent investigating agency, which submitted its report on 27.12.2006, which established that fraud was committed upon the petitioner by raising claim in collusion with the owner of the car.

7. In fact it was revealed from the charge-sheet filed by the police during the investigation that the car that was insured belonged to respondent No. 5, was not even involved in the accident, which took place on 13.4.2004.

8. Upon receiving the report from the investigating agency, the petitioner insurance company moved an application for recall of the award on the ground that the award had been obtained by the claimants on the basis of misrepresentation and fraud. The petitioner insurance company also filed an application for condonation of the delay alongwith the said application. It is this application, which had been rejected by the order dated 31.5.2008.

9. Learned Counsel for the respondents claimants has appeared and has opposed this writ petition saying that the present writ petition under Article 227 of the Constitution of India is not maintainable because firstly under the Motor Vehicles Act, 1988 there is no power to review or recall of the award passed u/s 168 of the Motor Vehicles Act. Secondly he has argued that against the award passed u/s 168 of the Act, it is open to the petitioner insurance company to file an appeal u/s 173 of the Act and therefore also this writ petition is not maintainable.

10. Learned Counsel for the petitioner has however argued that even though there may be no provision to review the award under the Motor Vehicles Act, every Court has the power to review or recall inherently the order or award, which had been obtained by a party either by fraud or misrepresentation.

11. Learned Counsel for the petitioner has relied on a decision of the Hon'ble Apex Court in the case of United India Insurance Co. Ltd. v. Rajendra Singh and Ors. (2000) 2 LR1 12 : 2000 (2) AWC 1349 (SC) in which an identical situation had arisen and the Hon'ble Apex Court has opined that in a case of fraud, the insurance company was justified in moving the High Court in writ jurisdiction. This decision of the Hon'ble Apex Court was also placed before the Tribunal while hearing the claim petition.

12. Having heard learned Counsel for the parties and having perused the material on record, I am of the opinion that once an application is moved alleging

fraud against the claimants then it was the bounden duty of the Tribunal to reconsider the matter and examine whether there was a fraud involved in the matter or not.

13. In the present case, the Tribunal has simply thrown out the matter on the ground of the delay. It is alleged that the entire money has already been deposited in the court below.

14. In the facts and circumstances of the case, I remand the matter to the Tribunal for reconsideration afresh with regard to the matter relating to fraud. In pursuance of the award, the money, which had been deposited before the Tribunal will not be released in favour of the claimant-respondents, until the Tribunal decides the application for recall afresh as moved by the petitioner. The claimant-respondents shall also be given every opportunity of hearing in establishing their case. The matter on remand will be heard by the Tribunal expeditiously, if possible, within a period of three months from the date of presentation of a certified copy of this order being placed before it. The order dated 31.5.2008, passed by the respondent No. 1 in Misc. Case No. 5 of 2007 is set aside.

15. The writ petition is disposed of as above.