(2003) 08 AHC CK 0147

In the Allahabad High Court

Case No : Civil Revision No. 311 of 2003

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Renu Rastogi and Others — RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

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

Citation : (2005) ACJ 12 : (2003) 6 AWC 5136

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : V.K. Birla, for the Appellant; Satish Chaturvedi, for Saurabh Srivastava and M.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Janardan Sahai, J.—This revision has been filed by Oriental Insurance Co. Ltd. against an award given by Motor Accidents Claims Tribunal. A preliminary objection has been raised by Mr. Satish Chaturvedi holding brief for Mr. Saurabh Srivastava, counsel for respondent-claimant about its maintainability. I have heard Mr. V.K. Birla, the learned counsel for the applicant insurance company also on this point. His submission is that u/s 173 of the Motor Vehicles Act (hereinafter referred to as ''the Act''), an appeal is provided against the award but it is not open to the insurance company to challenge therein the quantum of compensation awarded and the scope of challenge in such an appeal is confined to the statutory defences available to the insurance company u/s 149(2) of the Act and there being thus in effect no remedy of appeal the award of the Tribunal is subject to the revisional jurisdiction u/s 115, Civil Procedure Code. However, in cases where an application u/s 170 of the Act has been granted on account of the fact that the claimant and the person against whom the claim is made have colluded or the person against whom the claim is made has failed to contest, it is open to the insurance company to take all the defences available to the person against whom the claim is made.

2. Mr. V.K. Birla, learned counsel for the applicant submits that the applicant wants to challenge the finding on the point of negligence of the deceased and also on the quantum of compensation and as there was no permission u/s 170 of the Act, the appeal is not maintainable and in such a case a revision would lie. Reliance is placed upon a Division Bench judgment of Madhya Pradesh High Court in Sarjubai Vs. Gurudip Singh and Others, , in which it has been held that where the compensation awarded by the Tribunal is shockingly excessive it would be open to the insurance company to prefer a civil revision or a petition under Article 227 of the Constitution of India. It was held that the Motor Accidents Claims Tribunal is a court subordinate to the High Court and, therefore, subject to its revisional jurisdiction. Mr. Birla submits that in view of the decision of the Apex Court in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, it is not available to the insurance company to file a petition under Articles 226/227 of the Constitution of India and as such the only remedy available to the insurance company is to prefer a revision.

3. Section 115 of the CPC as substituted by the CPC U.P. Amendment Ordinance, 2003, provides that a superior court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against the order. The remedy of revision u/s 115, CPC is thus available against orders against which statutory appeal is not provided. An appeal lies u/s 173 of the Act against an award and, therefore, on the plain language of Section 115, CPC no revision lies. The effect of the scope of the appeal being limited to the defences u/s 149(2) of the Act may now be examined.

4. The reason why in an appeal by the insurance company the grounds that can be taken by it are limited to the defences in Section 149(2) is not anything contained in the language of Section 173 but the fact that in contesting the claim itself the insurance company can take only the defences permissible by Section 149(2). Where, however, permission u/s 170 has been granted the grounds available are all such grounds which are available to the person against whom the claim has been made. Thus, the scope of the appeal by an insurance company would in such a case be as wide as that available to the person against whom the claim has been made. It will be limited in other cases to grounds arising out of the statutory defences available to insurance company vide National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, In this case the Supreme Court held that Section 149, 170 and 173 are part of one scheme and if a different interpretation is given to Section 173 it would go contrary to the scheme and object of the Act. As the limitation on the grounds of challenge to an award in an appeal by the insurer u/s 173 of the Act flows out of the limited defences available to it u/s 149(2) there is no reason why the same limitations should not be read in the revisionary power assuming a revision was maintainable. The jurisdiction in revision is after all a part of the general appellate jurisdiction of the High Court vide Shankar Ramchandra Abhyankar Vs.

Krishnaji Dattatreya Bapat, The limitations imposed by Section 149(2) would be equally applicable to a revision as they are to an appeal and, therefore, the ground of excessiveness of the quantum of compensation or the negligence of the victim of the accident which are not defences available u/s 149(2) cannot furnish a justification for the view that as an appeal is not maintainable against these findings a revision would lie. The availability of a right of appeal and the scope of the appeal are different matters. Undisputedly an appeal lies against an award u/s 173 of the Act. In Sadhana Lodh Vs. National Insurance Company Ltd. and Another, the Apex Court held 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 of India on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. A revision too is a creature of the statute. On the same reasoning as has been adopted by the Apex Court in Sadhana Lodh, it can be held that the grounds of challenge cannot be enlarged by invoking the jurisdiction of the court in revision and, therefore, the fact that the scope of the appeal is limited to the statutory defences cannot be a ground to hold that a revision is maintainable. The decision of Madhya Pradesh High Court in Sarjubai Vs. Gurudip Singh and Others, that where the compensation is shockingly excessive the Tribunal''s award is liable to challenge under Article 227 of the Constitution of India or in revision is in conflict with the Apex Court decision in Sadhana Lodh. The observations in Sadhana Lodh about availability of the remedy of revision are in reference to cases where no appeal is provided. The reasoning that another remedy can be availed of as the scope of the statutory appeal is limited has not been accepted by the Apex Court as sound.

5. For these reasons I am of the opinion that the revision filed by the applicant is not maintainable. It is dismissed.

