**(2010) 08 GAU CK 0032**

**In the Gauhati High Court**

**Case No :** C.R.P. No. 16 of 2010

Oriental Insurance Co. Ltd. APPELLANT

Vs

Sri Hiralal Das and Others RESPONDENT

**Date of Decision :** 19-08-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149(2), 170, 173

**Citation :** (2011) 2 TAC 417

**Hon'ble Judges :** T. NK Singh, J

**Bench :** Single Bench

**Advocate :** K. Bhattacharjee, for the Appellant; R. Datta, A. Baidya, B. Bhattacharjee and S. Bhattacharjee, for the Respondent

**Final Decision :** Dismissed

## Judgement

T. NK Singh, J.—This revision petition or/application under Article 227 of the Constitution filed by the Insurance Company is directed against the judgment and award dated 24.07.2009 passed in T.S (MAC) 103 of 2008 by the learned Motor Accident Claims Tribunal, South Tripura, Udaipur.

2. Heard Mr. Mr. K. Bhattacharjee, learned Counsel for the Petitioner-Insurance Company, Mr. R. Datta, Mr. A. Baidya, Mr. B. Bhattacharjee and Mr. S. Bhattacharjee, learned Counsel appearing on behalf of the Respondents.

3. Only the facts sufficient for deciding the present revision petition are noted.

The T.S (MAC) 103 of 2008 is filed by the Respondent-claimant for compensation for the motor accident of the vehicle ensured with the Petitioner-Insurance Company. In the said MAC case the Petitioner-Insurance Company has been made one of the Respondents. The Petitioner-Insurance Company has limited grounds of defense as provided u/s 149(2) of the M.V. Act in the MAC case. The Petitioner-Insurance Company also contested the said MAC case. From the records it is clear that the Petitioner-Insurance Company has not obtained leave u/s 170 of the M.V. Act to contest the claim of the claimant-Respondent on all or any of the grounds which are available to the persons against whom the claim is made.

Unless the leave as provided u/s 170 of the M.V. Act is obtained by the Appellant-Insurance Company, the Appellant-Insurance Company is entitled to defend the claim of the Respondent-claimant only on the limited grounds mentioned u/s 149(2) of the M.V. Act. The learned Tribunal after hearing the case of both the parties passed the impugned judgment and award.

4. The impugned judgment and award is an appealable order inasmuch as the aggrieved party is open to file appeal u/s 173 of the M.V. Act to this Court. The Petitioner-Insurance Company certainly has the right to file appeal against the impugned judgment and award but only on the limited ground available u/s 149(2) of the M.V. Act in the absence leave u/s 170 of the M.V. Act.

5. On perusal of the memo of revision petition it is clear that the Petitioner-Insurance Company had taken several grounds over and above the limited grounds available u/s 149(2) of the M.V. Act for assailing the impugned judgment and award.

It is so well settled that even the constitutional authority cannot do indirectly what is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing any act, such provision cannot be allowed to be defeated by adoption of any subterfuge;and that would be clearly a fraud on the constitutional provision. Ref: Decision of the Apex Court (Constitution Bench) in Dr D.C. Wadhwa and Others Vs. State of Bihar and Others,

It is also well settled that where power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. Ref: Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others,

Where a statute vests certain power in an authority to be exercised in a particular manner, held, the power has to be exercised only in that manner. Ref: Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, When a statutory authority is required to do a thing in a particular manner, the same must be done in that manner alone. Ref: Bhavnagar University v. Palitana Sugar Mill (P) Ltd : (203) 2 SCC 111.

The Apex Court in Haryana State Industrial Dev. Corp. Vs. Shakuntla and Others, held that "where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, deviation to act in a different manner which does not disclose any discernible principles which is reasonable itself shall be labeled as arbitrary."

6. As discussed above, in the present case, the M.V. Act prescribes clear cut

procedure for seeking remedy against the impugned judgment and award, and if the Petitioner-Insurance Company is aggrieved, procedure prescribed is appeal u/s 173 of the M.V. Act within the parameters of the grounds available u/s 149(2) of the M.V. Act against the impugned judgment and award.

By means of legal acumen in drafting the present revision petition, Petitioner-Insurance Company cannot open an avenue which is not prescribed by the M.V. Act for assailing the impugned judgment and award on different grounds over and above the limited grounds mentioned in Section 149(2) of the M.V. Act.

7. The Apex Court as early as 2003, in clear terms, in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, held that "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." Paras-4, 5 and 6 of the SCC in Sadhna Lodh''s case (supra) read as follows:

4. It is not disputed 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. However, in a situation where there is a collusion between the claimant and the insured or the insured does not contest the clam and further, if the Tribunal does not implead the insurance company to contest the claim, in such a situation 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 merit, in that case it is open to the insurer to file an appeal against the award of the Tribunal on merits. Thus, in such a situation, the insurer can question the quantum of compensation awarded by the Tribunal.

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., Chandigarh Vs. Nicolletta Rohtagi and Others, 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 Constriction 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. The ratio laid down in Sadhna Lodh''s case (supra) is also followed by the Apex Court in Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, read as follows:

17. It is not in dispute that the right of appeal is a statutory right to the parties 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 MACT. u/s 173 of the Act, an insurer has a right to file an appeal before the High Court on limited grounds available u/s 149(2). 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. However, in a situation where there is collusion between the claimant and the insurer or the insured does not contest the claim and further, if MACT does not implead the Insurance Company to contest the claim, in such a situation it is open to the insurer to seek permission of MACT to contest the claim on the ground available to the insured or to a person against whom the claim has been made. If permission is granted and the insurer is allowed to contest the claim on merit, in that case it is open to the insurer to file an appeal against the award of MACT on merits. Thus, in such a situation, the insurer can question the quantum of compensation awarded by MACT. As noticed earlier in the present case, the insurer made a challenge to the award of MACT before the High Court in the writ petition on the ground of its liability to pay the interest on the amount of compensation for a specified period without obtaining the permission of MACT as contemplated under the statute. Thus, in the light of the decision of this Court in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, dealing with the provisions of Sections 173 and 149(2) of the Act and the provisions of Articles 226/227 of the Constitution an also Section 115 of the Code of Civil Procedure, 1908 this Court held that since the insurer has a remedy by filing an appeal before the High Court on the available defences envisaged under the statute, writ petition under Articles 226/227 of the Constitution by an insurer

 

challenging the award of MACT is not maintainable.

18. In our view, the above judgment clinches the issue that the writ petition filed by the Insurance Company was not maintainable against the order of MACT awarding interest at the rate of 10% per annum on the amount of compensation from the date of the institution of the claim petition till the date of payment. The impugned order, accordingly, is set aside. This appeal is allowed.

Consequently, the writ petition is dismissed. The award of MACT granting compensation to the claimants along with interest is fully justified and it is accordingly maintained. The parties are left to bear their own costs.

9. In the case in hand, it is not the case of the Petitioner-Insurance Company that because of collusion between the Respondent-claimant and insurer, the insurer does not contest the claim and also the Petitioner-Insurance Company was not impleaded as party in the MAC case. As stated above, Petitioner-Insurance Company was one of the Respondent in the MAC case and Petitioner-Insurance Company also contested the MAC case; but the grievance made out in the present revision petition is that the learned Tribunal had not correctly decided the MAC case on merit vide impugned judgment and award and, therefore, Petitioner-Insurance Company wanted to assail the impugned judgment and award on different grounds over and above the grounds mentioned in Section 149(2) of the MV. Act by taking advantage of legal acumen in drafting the present revision petition, which is not permissible under the law, for the reasons discussed above.

10. Normally, if a party is aggrieved by an order for which there is no provision for appeal in the concerned statute or/Act has to file revision, if not specifically barred by the concerned statute. The normal procedure also cannot be applied in the instant case inasmuch as the impugned judgment and award is an appealable order against which appeal could be filed u/s 173 of the M.V. Act. This Court is of clear view that the present revision petition is not maintainable.

Even if revision petition is maintainable for the sake of argument, revisional power is circumscribed and limited. In the present case nobody disputes that the Tribunal has all the trappings of a Court and the proceedings before it closely resemble to the proceedings in a Civil Court. In such a case revision against the impugned judgment and award can only be filed for the limited grounds mentioned in Section 115 of the CPC, 1908 which read as follows:

115 Revision.- [1] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto and if such Court appears -

(a) to have exercised a jurisdiction not vested in it bylaw, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it has been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

[2] The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies wither to the High Court or to any Court subordinate thereto]

[3] A revision shall not operate as a stay or suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court]

11. None of the grounds mentioned in the present revision petition for assailing the impugned judgment and award comes under the limited grounds for filing revision mentioned in Section 115 of the CPC. This Court reiterates that the present revision petition is not at all maintainable, not on the ground that the ground taken in the present revision petition does not come under one of the grounds for revision mentioned in Section 115 of the CPC. What is made clear by this Court, is that the Petitioner-Insurance Company misunderstood the provisions of Sections 149, 170 and 173 of the M.V. Act as well as Article 227 of the Constitution and also the settled principles of law regarding the remedy to be taken against an order which is an appealable order under the concerned statute or Act; and also under what grounds against an order the revision petition is to be filed.

12. For the reasons discussed above, the present revision petition is not maintainable and, accordingly dismissed.

 