(2001) 08 RAJ CK 0066

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3643 of 1999

Oriental Insurance Co. Ltd. (The) APPELLANT

Vs

Uma Sharma and Others (Smt.) RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

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

Citation : (2003) ACJ 821 : (2002) 2 RLW 942 : (2002) 1 WLC 379

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Virendra Agarwal, for the Appellant; Sandeep Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Keshote, J.—This petition under Article 227 of the Constitution is directed by the Oriental Insurance Company Ltd. though its Constituted Attorney, Jaipur against the final award Annex.3 dated 15.4.1999 in the claim petition filed by respondent Nos. 1 to 4. This matter has come up for preliminary hearing in the Court on 25.10.99. The Court has issued notice to respondent Nos. 1 to 4 to show cause as to why this petition may not be admitted. Thereafter the matter has come up for hearing on admission of the matter today. Learned counsel for respondent Nos. 1 to 4 raised a preliminary objection that this petition may not be entertained by this Court as the award which is challenged by the petitioner Insurance Company in this petition is appealable.

2. Learned counsel for the petitioner on the other hand submitted that it is a case where the Motor Accident Claims Tribunal passed the award in total disregard to the statutory provisions as well as the law laid down by the Supreme Court and this petition is maintainable.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I find sufficient force, merits and substance in

the preliminary objections raised by the learned counsel for the respondents regarding the maintainability of this petition on the ground of availability of the alternate remedy. When under the statute the appeal is provided against the order challenged in the petition it is statutory obligation on the part of the litigant first to avail of the statutory remedy of appeal. Learned counsel for the petitioner does not dispute that against the award made by the Motor Accident Claims Tribunal the appeal does lie to this Court. What the explanation has been given to circumvent this remedy of appeal which admittedly also lies to this Court that the award of the Motor Accident Claims Tribunal is given in total disregard to the judgment of the Supreme Court and the statutory provisions. This is the illegality, impropriety or error in the award of the Tribunal at the most and for its correction the statutory remedy of appeal is provided to this Court and this petition filed by the petitioner is wholly misconceived, misplaced and totally ill adviced.

4. Section 173 of the Motor Vehicles Act, 1988 provides the appeal against the award of the Motor Accident Claims Tribunal to this Court. Proviso to Section 173 provides that no appeal by person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it Rs. 25,000/- or 50%-of the amount so awarded whichever is less in the manner directed by the High Court. In the case in hand this right of appeal was available on deposit of some amount of the award by the petitioner and this writ petition appears to have been filed with the obvious purpose and object not to deposit this amount as provided under the proviso to Section 173 of the M.V. Act.

5. Insurance Company is not an ordinary litigant. It should not act and behave in the manner in which the ordinary litigant acts in the Court. It is a State within the meaning of Article 12 of the Constitution. Third party insurance is now compulsory under the statute. What for this compulsory third party insurance has been made a statutory requirement for the motor vehicle is very obvious. The reason is that on the death or the injury caused to a person in the motor vehicle accident, they get the compensation immediately. It was very difficult for the claimants to recover the amount of compensation from the owner of the vehicle but now after this amendment the Insurance Company is to reimburse for the liability of the compensation of the owner to the claimants. The Insurance Company instead of approaching, acting and looking in furtherance of the object and purpose for which the statutory compulsion is there for third party insurance of the vehicle acts, behaves in a manner like an ordinary litigant in the courts. The appeal lies to this Court and I fail to see how this grievance made by the petitioner on the ground raised to challenge the award could not be raised, considered and decided by this Court in the appeal. The appeal is more effective and wider remedy then petition under Article 227 of the Constitution. Under Article 227 of the Constitution of India this Court has very limited power of judicial review of the awards. Looking to this difference of the powers of this Court under Article 227 of the Constitution and Section 173 of the Motor Vehicles Act, 1988 still the Insurance Company has chosen on his part to file this petition

clearly goes to show the whole purpose and intention appears not to deposit the amount which is a condition precedence for maintainability of appeal in the court. This amount is also a meagre amount for the Insurance Company looking to the amount of award passed in the claim petition in favour of the respondent Nos. 1 to 4 by the Motor Accident Claims Tribunal. It is not more res integra that when the litigants have efficacious alternate remedy available against the impugned award/judgment challenged in the petition, the Court has to insist upon them first to avail of the remedy. Looking to this developing tendency of the litigants to directly come to the High Court by way of petition under Article 226 or 227 of the Constitution against the judgment, award or orders etc. of the courts or the Tribunals against which the statutory appeal or revision is provided the Courts are to discourage this approach of the litigants. Moreover when the statutory appeal is provided it has to be availed of unless exceptional case is made out. As a rule the statutory appeals are to be availed of in the case where it is provided. The powers conferred upon the court under Article 226 of the Constitution are discretionary in the nature. This can be invoked for enforcement of any fundamental or legal right. The powers under Article 227 of the Constitution of this Court are of superintendence. This power cannot be exercised in all the cases merely because the award, judgment or order of the Tribunals or the courts in said to be against the statutory provision or the decision of the Supreme Court. If only on this ground in all the cases and moreso when the appeal lies to this Court against the award of the Motor Accident Claims Tribunal, the Insurance Company is permitted to circumvent the remedy it will result in negation or rendering of provisions of Section 173 of the Motor Vehicles Act, 1988 ineffective. Where the remedy of appeal is available the Court should insist upon the party to avail of the same instead of invoking its extraordinary jurisdiction.

6. In case of State of Himachal Pradesh v. Raja Mahendra Pal and Ors. (1), their Lordships of the Supreme Court held that in the case where the alternate remedy is available this does not debar the High Court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of an alternate, efficacious remedy. The existence of the special circumstances are required to be noticed by the court before issuance of the direction by the court while invoking Jurisdiction under Article 226 of the Constitution. In this case while issuing the notice to the respondents the counsel for the petitioner appeared and has not pointed out any peculiar special facts justifying the entertaining of this petition by the court notwithstanding the existences of an alternate efficacious remedy. Otherwise also I do not find any special circumstances which could be taken sufficient to deviate from the settled preposition of law regarding the exercising of jurisdiction under Article 226 of the Constitution in a case where the petitioner in this case has efficacious alternate remedy of appeal against the impugned award before this Court itself. The two circumstances as shown by the petitioner in this case to persue this Court to deviate from this settled preposition of law of exhausting of the statutory remedy-

available first by the litigants are hardly sufficient in the case to permit the petitioner to bye pass this remedy of appeal which also lies to this Court itself. In the facts of this case it is a clear case where the petitioner has not only filed wholly misconceived, misplaced, frivolous and ill adviced petition but it attempts to abuse the process of the Court.

7. In the result this petition fails and the same is dismissed. As the petitioner has in this case by fling this frivolous, misconceived, misplaced and ill-adviced petition not only made an attempt to abuse the process of the Court but also consumed valuable and precious judicial time of the Court It is also resulted in increasing the workload of the Court. The Court is facing a serious problem how to reduce its workload and in case this Insurance Company behaves, acts and proceeds in the manner and fashion in which what it has been done in the present case it unnecessary increased the workload by a-petition which was wholly avoidable. The petitioner is directed to pay Rs. 2,000/- as an exemplary cost. This amount is to be deposited in the Chief Minister''s Relief Fund within a period of one month from the date of receipt of copy of this order and the receipt thereof be produced by the petitioner on the record of this case. The General Manager of the Insurance Company is free to recover this amount from the officer who has advice for filing of this petition against the award despite the fact that statutory appeal u/s 173 of the Motor Vehicles Act, 1988 was available to this Court. This exercise is to be completed by the General Manager of the Insurance Company within a period of three months from the date of receipt of copy of this order and compliance be reported to this Court also. The Registry is directed to send two copies of this order forthwith to the Regional Manager, Oriental Insurance Company, Anand Bhawan, Sansar Chandra Road, Jaipur. The Regional Manager of the Company is directed to send one copy of this order received from the Registry by him to the General Manager of the Company forthwith for his information and compliance thereof.