
(1998) 10 MAD CK 0030

In the Madras High Court

Case No : Cr.R.P. No. 2132 of 1998 and C.M.P. No. 10572 of 1998

Oriental Insurance Company

APPELLANT

Vs

R. Mani and Another

RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2000) ACJ 247 : (2001) 3 LLJ 276 : (1999) 2 LW 248 : (1999) 1 MLJ 117

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Subramani, J.—The second opposite party in Workmen's Compensation Case No. 227 of 1997 on the Commissioner of Workmen's

Compensation, Coimbatore, is the revision petitioner. This revision petition is filed under Article 227 of the Constitution of India.

2. First respondent in this revision filed the claim petition making the second respondent and the petitioner liable for getting compensation. First

respondent herein is the driver of a vehicle belonging to the second respondent and he met with an accident. Making petitioner also liable, he

produced an insurance policy. Steps have been taken by the second respondent against the petitioner. Relying on the insurance policy, award was

passed making the petitioner also liable and directed it to pay a sum of Rs. 1,21,099. The insurance policy was marked in the case as Exhibit A5.

3. After the award was passed it was found that the policy produced before the Court was fabricated and therefore the petitioner filed an

unnumbered interlocutory application to reopen the award giving various reasons why the award shall not stand as against the petitioner. Authority

simply returned the same on the ground that the said application is not maintainable and it is only to protract the recovery proceedings. The same is

challenged in this revision under Article 227 of the Constitution of India.

4. The finding that the petitioner wants to delay the proceedings cannot stand since it has already deposited the entire award amount before the

authority and only thereafter filed the application to reopen the case.

5. The second contention that there is no jurisdiction to reopen the case also cannot stand in view of the decision in *Indian Bank Vs. M/s. Satyam*

Fibres (India) Pvt. Ltd., . In that case their Lordships held that fraud invalidates every act of the Court and if any order is obtained on the basis of

fraud, it is the duty on the part of the Tribunal to have the same set aside. Their Lordships also said that every Court/Tribunal has got inherent

jurisdiction to set aside orders obtained on fraud. In Paras 20 to 23 at page 2597 their Lordships held thus:

20. This plea could not have been legally ignored by the Commission which needs to be reminded that the authorities be they constitutional,

statutory or administrative (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are

obtained by fraud as fraud and justice never dwell together (*fraus et jusnunquam cohabitant*). It has been repeatedly said that fraud and deceit

defend of excuse no man (*Fraus et dolus nemini patrocinari debent*).

21. In *Smith v. East Elloe Rural District Council* 1956 AC 736. the House of Lords held that the effect of fraud would normally be to vitiate any

act or order. In another case *Lazarus Estate, Ltd. v. Beasley* 1956 (1)QB 702 DENNING L.J. said.

"No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything"

22. The judiciary in India also possesses inherent power, specially u/s 151 CPC to recall its judgment or order if it is obtained by fraud on Court.

In the case of fraud on a party to the suit or proceedings the Court may direct the affected party to file a separate suit for setting aside the decree

obtained by fraud. Inherent power are powers which are resident in all Courts especially of superior jurisdiction. These powers spring not from

legislation but from the nature and the construction of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure

obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the

orderly administration of the Court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of

Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the

Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order See

Benoy Krishna Mukerjee Vs. Mohanlal Goenka and Others, ; Gajanand Sha and Others Vs. Dayanand Thakur, ; AIR 1947 236 (Nagpur) ;

Devendranath Sarkar v. Ram Rachpal Singh AIR 1926 Oudh 315; Saiyed Muhammad Raza v. Ram Saroop AIR 1929 Oudh 385; Bankey

Behari Lal v. Abdul Rahman AIR 1932 Oudh 63; Lekshmi Amma Chacki Amma v. Mammen Mammen 1955 KLT 459. The Court has also the

inherent power to set aside a sale brought about by fraud practiced upon the Court Ishwar Mahton and Another Vs. Sitaram Kumar and Others, ,

or to set aside the order recording compromise obtained by fraud; (Bindeshwari Pd. Chaudhary Vs. Debendra Pd. Singh and Others, Smt. Tara

Bai v. S. Krishnaswamy Rao AIR 1985 Kar 270.

6. Petitioner apart from relying on the above decision also, has given the circumstances under which he filed the application before the authority.

The accident happened on March 30, 1997 and on that date, there is no insurance policy at all. A policy was taken only on March 31, 1997. If

that be so the company cannot be made liable. Various other circumstances also pointed out in Para 5 of the application before the authority.

There is an allegation of fraud and prima facie if it is found to be sustainable, the authorities should not have returned the same for the reasons

stated therein.

7. In the result, I set aside the impugned order and I direct the Commissioner of Workmen's Compensation, Coimbatore to reopen W.C. No.

277 of 1997 in so far as the petitioner is concerned and decide the case in accordance with law. There is no necessity to pass any fresh order on

the interim application filed by the petitioner and to reopen the main compensation itself in so far as the petitioner is concerned. I direct the authority to issue notice to all parties and decide the same in accordance with law. Till fresh orders are passed, the amount deposited by the petitioner will be allowed to be disbursed. If ultimately it is found that insurance company is also liable the amount already deposited will allowed to be withdrawn by the claimant. If it is found otherwise, the insurance company is entitled to get back the amount. I make it clear. I have reopened the case only as against the insurance company. The award against the owner of the vehicle is confirmed and the claimant is entitled to realise the amount from the owner of the vehicle on the basis of the award.

8. The civil revision petition is allowed as above. No costs. Consequently C.M.P. No 10572 of 1998 is closed.