
(2007) 04 GAU CK 0053

In the Gauhati High Court

Case No : Writ Petition (C) No. 39 of 2006

Oriental Insurance Company Ltd.

APPELLANT

Vs

Ismile Miah and Others

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2009) 1 GLR 200

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : B. Das and P.S. Chakraborty, for the Appellant; D.B. Sengupta and D.P. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—Invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution, the Oriental Insurance Company Limited has called in question validity and correctness of the judgment dated 5.8.2004 in T.S (MAC) No. 107 of 2001 passed by the Motor Accident Claims Tribunal, West Tripura, Agartala. By that judgment the said tribunal has awarded Rs. 2,23,000 (Rupees two lakhs twenty-three thousands) with interest towards compensation for the death of one Haran Miah on 11.2.2000 due to the injuries sustained by him in a motor accident on 11.6.1998. The short question falling for consideration of this Court is whether a award of compensation for a death, which could not be satisfactorily proved to be the result of a motor accident, can be interfered with in exercise of supervisory jurisdiction under Article 227 of the Constitution.

2. The factual matrix of the case is that the deceased Haran Miah was the driver of a Auto Rickshaw bearing registration No. TRT-2522. On 11.6.1998 he was driving the three-wheeler with passengers inside it from Agartala town to G.B. Hospital. At a place on the way near Hindi school a Fiat car was coming from the opposite direction. The two vehicles collided allegedly due to rash and negligent

driving by the driver of the Fiat Car. Haran Miah allegedly sustained serious injuries. He was under treatment in the G.B. Hospital from 11.6.1998 to 17.6.1998, for a period of seven days only. He was thereafter brought home. It is claimed that he was under homoeopathy treatment for a long period. On 11.2.2000, after a period of more than one year eight months, Haran Miah died allegedly due to the injuries sustained by him in the said motor accident. No post mortem report was done to detect the cause of the death. Except the statement of a homoeopathy practitioner no other death or documentary evidence could be adduced to establish the nature of the injuries immediately after accident and during the long period of more than one year eight months or whether the death was at all resulted from the said injuries. Thus, the accident and involvement of the vehicle though admitted and proved, question loomed large about the nature of the injuries, which required only seven days' treatment in the G.B. Hospital. The learned tribunal has, however, made attempt to answer this question from a broader perspective, injecting humanitarian consideration without insisting for strict proof thereof.

3. The homoeopathy practitioner, who treated the deceased for a long time, stated in his deposition that due to the injuries the deceased was incapable of moving. The family was in such abject poverty that adequate treatment could not be provided to the victim. Considering that the provisions of awarding compensation in the Motor Vehicles Act is a social welfare legislation, which does not contemplate strict proof like a criminal case, the learned tribunal felt inclined to consider the larger canvas of social security aspect of the case in the death of a young boy of 22 years only who was the sole bread earner of the family, causing a rude blow to his parents and wife suddenly facing uncertainty and starvation. Overlooking the finer points of credible evidence to satisfactorily connect the death with the injuries sustained in the motor accident, the learned tribunal was inclined to over-value the statements of the father of the deceased and of the homeopathy practitioner weaving a thin link between the two for making the award impugned.

4. Though from a careful perusal of the evidence and materials on record a different view that it is well nigh difficult to connect the death with the injuries sustained in the motor accident is very much possible, the question that poses for decision is whether in such a situation when a different view is possible, this Court can interfere with the judgment and award impugned in exercise of the jurisdiction under Article 227 of the Constitution.

5. Mr. B. Das, learned senior advocate for the Petitioner-insurer has made a strong submission that in a case where failure of justice is manifest on the face of the records which unmistakably show arbitrary exercise of powers wrongly doling out public money, the administration of justice would fail if the High Court remains a silent spectator. The Tribunal in the present case, Mr. Das submits, has run beyond its parameters assuming the role of an adjudicator for charity at sweet will, thus, justifying interference from the High Court to keep it within

bounds.

6. Per contra, the argument advanced by Mr. D.B. Sengupta, learned senior Counsel for the Respondents, is that by no means the case can be said to be one of no evidence. There is some evidence, though slender, coming from the homoeopathy practitioner (PW2) to link the death of the victim with the injuries sustained by him in the motor accident one year eight months ago. The learned tribunal in its wisdom accepted this evidence to be trustworthy and considering the other materials on record refused to insist for more corroborative evidence to strengthen the link. It is his strong submission that even if this Court finds it difficult to accept the materials on record in support of the findings of the learned tribunal, it cannot interfere with the same in view of the limited jurisdiction available under Article 227 of the Constitution. His further submission is that the law has been settled in a line of decision by the Apex Court that an Insurer cannot challenge an award on any ground other than those available u/s 149(2) of the Motor Vehicles Act. If no appeal lies for want of any of such grounds provided in Section 149(2) of the Act, no other proceeding including one under Article 227 would lie on any other ground to challenge the award under the said Act. In support of this submission the decision of the Apex Court heavily relied on by him is *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, . The relevant observation in para 7 of the said judgment is gainfully quoted below:

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

7. It has been the settled legal position that the right to file an appeal is a statutory right and, therefore, the grounds of challenge in such a statutory appeal must be as provided in the statute. Such grounds cannot be enlarged through a proceeding under Article 226 of the Constitution. That apart, an error of fact or of law committed by a tribunal cannot be corrected by this Court on a petition filed under Article 227 of the Constitution and this being the legal position the judgment and award impugned, though passed on very insufficient and unsatisfactory evidence, cannot be interfered with.

8. For the reasons and discussions aforementioned, this writ petition is found to be devoid of any merit and consequently the same is dismissed. No cost.