
(2004) 04 MAD CK 0084
In the Madras High Court
Case No : C.R.P.No. 1404 of 1998

P. Subramanian

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 2004 Mad 494 : (2004) 5 CTC 718 : (2004) 2 MLJ 588

Hon'ble Judges : M. Thanikachalam, J

Bench : Single Bench

Advocate : N.L. Rajah, for the Appellant; K.S. Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

M. Thanikachalam, J.—The petitioner in O.P.No.75/94 on the file of the District Consumer Disputes Redressal Forum, Tiruchirapalli,

hereinafter called "the District Forum", is the revision petitioner.

2. The petitioner had filed a claim petition before the District Forum for the recovery of a sum of Rs.1,20,439.50, against the Insurance

Company/respondent, for the damages to his vehicle, sustained in the accident, which took place on 29.9.1993, on the ground that the Insurance

Company had not performed its obligation, whereas it had committed deficiency in service.

3. The respondent/Insurance Company opposed the application contending, that on the date of the accident, the petitioner did not possess a valid

and effective driving license, to drive the Tourist Taxi and in this view, they are entitled to repudiate the claim of the petitioner.

4. The District Forum, considering the rival claim of the parties, as well as the position of the law, took the view that the rejection of the claim by

the Insurance Company, solely on the ground of not possessing an effective valid driving license by the driver, cannot be justified in law and on

facts. In this view, the District Forum had directed the respondent, to pay a sum of Rs.1 lakh as damages, caused to the vehicle with interest there

on at 15% per annum from 1.10.1993 till the date of payment, with compensation of Rs.20,000/-.

5. The Insurance Company aggrieved by the said order preferred an appeal before the State Forum in A.P.1177/1996. The State Consumer

Disputes Redressal Commission, Chennai, hereinafter called "the State Commission", appreciating the facts in issue, as well as the law, took the

view that the District Forum had committed an error in not following the decision of the State Commission in A.P.No.1443/95 and committed

further error in following the decision reported in 1995 Madras L.J. 82, which was considered by the State Commission and a contrary view was

taken. The State Commission observing, that the District Forum ought to have followed the order passed by the Commission in

A.P.No.1443/1995, held that there was violation of the condition in the driver's clause in the policy and as such the insurance company cannot be

held, to pay compensation. In this view of the matter, the State Commission set aside the order of the District Forum, as per the order dated

1.4.1998.

6. The petitioner aggrieved by the order of the State Commission filed this C.R.P. under Article 227 of the Constitution of India, questioning the

correctness of the order passed by the State Commission.

7. Heard the learned counsel for the petitioner, Mr.N.L. Rajah and the learned counsel for the respondent, Mr. K.S.Narasimhan.

8. The learned counsel for the petitioner submits that the decision rendered by this Court reported in 1995 Madras L.J. 82, is binding upon the

District Forum as well as the State Commission, which was correctly accepted by the District Forum, whereas the State Commission had

committed an error, in not accepting the position of law and in this view, this Court has jurisdiction under Article 227 of the Constitution of India,

to set aside the order passed by the State Commission, thereby restoring the order passed by the District Forum.

9. Per contra, the learned counsel for the respondent/Insurance Company

submits that the petition filed by the claimant under Article 227 of the Constitution of India, is not at all maintainable, in view of the fact that an appeal is provided, to question the validity of the order passed by the State Commission, before the National Consumer Disputes Redressal Commission and in this view, the revision as such, is not maintainable. It is the further contention of the learned counsel for the respondent, that as per the Apex Court's ruling, when it is shown on fact that the driver of the vehicle in question, did not possess valid and effective license at the time of the accident, the Insurance Company is entitled to repudiate the same and considering this aspect, the State Commission not following the ruling of this Court, had rendered a decision and even assuming that it is erroneous, this Court has no power under Article 227 of the Constitution of India, to set aside the same in view of the specific provision, available u/s 21 of the Consumer Protection Act, 1986.

10. The petitioner had insured the vehicle viz., Tourist Car bearing Regn.No.TAY 3000 with the respondent Insurance Company, for the period 3.8.1993 to 2.8.1994, not in dispute. When the petitioner/owner of the vehicle was driving the vehicle on 29.9.1993 at about 2.30 p.m. from Tuticorin to Tiruchirapalli, it met with an accident and the vehicle sustained damages. On the basis of the policy issued by the Insurance Company, he preferred a claim, which was negated by the Insurance Company resulting O.P.No.75/94, ending in an award, which was set aside by the State Commission, giving cause of action for this revision.

11. The petitioner though had a license, it expired on 16.7.1993. He had renewed the same only on 6.10.1993. In the meanwhile, on 29.9.1993, the accident took place. Thus, it is made crystal clear that on the date of the accident, the driver did not hold effective license. One of the policy conditions is that a person driving, should hold an effective driving license, at the time of the accident. On the facts established, the driver had no effective license and in this way, it seems the Insurance Company repudiated the claim, which is accepted by the State Commission. In this revision, this Court is not very much concerned about the merits of the case and the only question, which I have to answer is, whether the order passed by the State Commission can be set aside, under Article 227 of the Constitution of India.

12. The learned counsel for the petitioner, in order to maintain the application under Article 227 of the Constitution, relied on a decision reported in

The Managing Director, Nadippaisai Pulavar K.R. Ramaswamy Sugar Mills Vs. A. Fareed Bawa and others, , wherein P. Sathasivam, J. has held

that when the State Commission had committed flagrant violation of law, as well as error of law, on the face apparent of the record, that can be

rectified under the power vested in this Court, under Article 227 of the Constitution of India. On facts, I am of the view, the ratio laid down in the

said case will not come to the aid of the petitioner. In the case involved in the above decision, some of the farmers approached the sugar mill, to

become shareholders, thereby to avail the loan facilities, which was not complied with by the sugar mill. When the matter went to the State

Commission, it seems the State Commission awarded general damages, which was under challenge in that revision. Considering the facts and

circumstances of the case, that too, when there was no appeal provision, as contemplated u/s 19 of the Consumer Protection Act, this Court had

held that there was flagrant violation, as well as lack of jurisdiction and in this view, exercising the power of superintendence, this Court had set

aside the order, which is not applicable to our case, under the facts and circumstances of the case.

13. The learned counsel for the respondent would contend, that if the petitioner is aggrieved by the order passed by the State Commission, his

remedy is only to approach the National Commission u/s 21 of the Consumer Protection Act, 1986 and he cannot invoke Article 227, appears to

be well founded. Section 21 of the Consumer Protection Act says:

Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State

Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has

failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

From the above section, it is seen, an appeal is provided against orders of any State Commission to the National Commission. Therefore, if at all,

the petitioner is aggrieved that the State Commission had committed an error, in not accepting his case, his remedy is to approach the National

Commission and not to invoke the jurisdiction of this Court under Article 227 of the Constitution. If no appeal is provided or if it is shown that the

State Commission has passed an order, on erroneous assumption of jurisdiction or refused to exercise the jurisdiction, or committed any grave

dereliction of duty or flagrant violation of law or error of law apparent on the face of the record, violating the principles of natural justice rendering

perverse finding, arbitrary or capricious in nature, then only this Court can exercise the power under Article 227, which are all not available in this

case. In this context, we have to see the decision of the District Forum, as well as the decision of the State Commission.

14. The District Forum had followed the decision of this Court, ignoring the decision of the State Commission, where the State Commission took a

contra view, to the decision of this Court. The contra view taken by the State Commission, in not following the decision of this Court, cannot be

prima facie labeled as flagrant violation of law, as well as error of law, considering the decision rendered by the National Commission, which they

are bound to follow ordinarily, as well as the rulings of the Apex Court, to some extent. It is true, the District Forum and State Commission are

bound by the law, declared by this Court and they cannot ignore the decision, in order to reach a different conclusion. If the view taken by this

Court is contrary to the Apex Court ruling, probably the State Commission may be well within its jurisdiction, in not following the decision of this

court.

15. In this context, the learned counsel for the respondent invited my attention to a decision reported in Oriental Insurance Co. Ltd. Vs. Sony

Cheriyar, wherein it is held by the Apex Court, that the Insurance Policy should be strictly construed to determine the extent of insurer's liability.

When the policy says, that there should be effective and valid license, if it is violated, then the insurance company is entitled to repudiate the same.

Effective driving license would mean a valid license, both as regards the period and type of vehicle, as held by the Apex Court in Ashok

Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., . In the same line, the National Commission also held that the insurance company is entitled

to repudiate the claim, on the ground that the driver was not holding an effective license on the date, when the loss occurred and the license was

got renewed only after the incident. In this view, considering the facts and circumstances of the case, it seems, the State Commission has not

followed the decision of this Court, which cannot be termed as flagrant violation, in order to exercise the jurisdiction under Article 227 of the

Constitution.

16. Assuming that the State Forum had committed an error, in not following the judicial precedent, which is a must, in order to maintain

consistency in the judicial system, which should be the basic principle, as held by the Apex Court, the judges are bound by the precedents and

procedure and the same is well applicable to the State Commission also. However, in this case, the State Commission had not followed the

decision of this Court, whereas it had preferred its own decision, and ignored the decision of this Court in 1995 M L.J 82. Now, the question is

whether that could be rectified under Article 227 of the Constitution of India.

17. In Chairman & others v. The District Consumer Disputes & another 2001(2) TNLJ 244, a division bench of this Court has held, invoking

Article 226 of the Constitution not competent, when alternate remedy is available to the party, which principle could be well extended to this case

also. In the case involved in the above decision, an order passed by the District Forum was impugned in a writ petition. The learned single judge

dismissed the writ petition and directed the registry to transmit the matter along with all connected records, to State Commission, for disposal, in

accordance with law and on merits, since there is a provision for an appeal, questioning the order of District Forum. Questioning the said order, the

writ appeal was preferred and in that case, it is held that it is the bounden duty of a person, to exhaust all alternate remedies and he cannot directly

question the District Forum's order, by invoking the jurisdiction of the Court under Article 226 of the Constitution of India. Here also, an

alternative remedy is available to the petitioner viz., an appeal to the National

Commission. Therefore, extending the above principle, I should conclude that the C.R.P. is not at all maintainable under Article 227 of the Constitution of India, which is well supported by another decision of this Court.

18. In A.2972 K. Pudur Primary Agriculture Co-operative Bank Ltd v. The State Consumer Disputes Redressal Commissioner & others 2000

(2) TNLJ 239, P. Sathasivam, J. has held, in as much as there is a specific provision for appeal in the enactment, by ignoring the said provision it

would not be possible for this court to entertain the writ petition, go into the merits of the order passed by the State Commission and pass an order

as claimed by the petitioner. The same principle could be extended to this case also, though it is under Article 227. As seen from Section 21 of the

Consumer Protection Act, an effective remedy is provided under the Act, giving opportunity to the parties, to prefer an appeal against the orders

of any State Commission and therefore, remedy of the petitioner, if any, is to approach the National Commission and not to invoke the jurisdiction

of this Court, under Article 227 of the Constitution of India. In this view of the matter, even assuming that the State Commission has not followed

the precedent of this Court, the remedy available to the petitioner is only to approach the National Commission and as such, I am of the

considered opinion that the revision petition is not maintainable.

In the result, the revision petition is dismissed. No costs.