

(2008) 02 GAU CK 0061
In the Gauhati High Court

Rekha Paul and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149, 166, 170, 173

Citation : (2008) 1 GLT 591

Hon'ble Judges : Jasti Chelameswar, C.J;Ranjan Gogoi, J;B.K. Sharma, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—While the writ appeal is in respect of an order passed by the learned Single Judge permitting conversion of the writ petition filed against the judgment and award of the Motor Accidents Claim Tribunal (MACT) into are-vision petition, the writ petition is in respect of the judgment and award passed by the MACT. The writ petitions involved in this proceeding were filed by the Insurance Company against the judgments and awards of the MACT. The matter has come before us by way of reference made by the Division Bench, which heard the matter. Since the issue involved is one and the same, the writ appeal and the writ petition have been heard analogously and are being disposed of by this common judgment and order.

2. The three appellants in the writ appeal made an application u/s 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of one Shri Arun Kanti Paul who was the husband of the appellant No. 1 and father of the appellants No. 2 and 3. He died in a motor accident on 1.6.1997. The claim application was filed before the MACT, West Tripura, Agartala and the same was registered and numbered as T.S. (MAC) No. 86/1998. The Tribunal by its judgment and award dated 12.5.2000 awarded compensation to the appellants amounting to Rs. 19,27,000/- Being aggrieved, the Insurer i.e. the Oriental

Insurance Company filed the writ petition being WP (C) No. 316/2000 under Articles 226/227 of the Constitution of India. The writ petition was resisted by the appellants herein raising the plea of its non-maintainability. Situated thus, the Insurance Company made a prayer for conversion of the writ petition into a revision petition, which was allowed by the learned Single Judge, by order dated 24.11.2003 making a grievance against which, the claimants/appellants preferred the writ appeal being W.A. No. 03/2004 (Agartala), which has been re-numbered as W.A. No. 389/2006 (Ghy.).

3. The writ petition being W.P. (C) No. 123/2000 (Agartala) was filed by the insurer i.e. the Oriental Insurance Company Ltd. against the judgment and award dated 20.12.1999 passed by the MACT, West Tripura, Agartala u/s 166 of the Act in T.S. (MAC) No. 249/1995 by which the claimants/respondents were awarded compensation amounting to Rs. 2,00,000/-. The claim petition was filed by the claimants, the wife and mother respectively of the deceased, who died in a motor accident on 16.9.1994.

4. The Division Bench upon hearing the writ appeal, having raised the question by way of reference, as to whether a Claims Tribunal is a Civil Court, subject to the jurisdiction of the High Court within the meaning of Section 115 of the Code of Civil Procedure, by its judgment and order dated 12.9.2006, the matter has come before us. Similarly, in the writ petition also, the Division Bench by its judgment and order dated 3.10.2007, by way of reference, having raised the question of the insurer's right to invoke High Court's jurisdiction under Articles 226/227 against an award or decision of a Claims Tribunal in the backdrop of the limitations imposed by Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988, the same has come before us.

5. We have heard Mr. B.C. Das, learned Sr. Counsel alongwith Mr. S. Dutta, learned Counsel appearing for the Insurance Company as well as Mr. S. Deb, learned Counsel appearing for the claimants. We have given our anxious consideration to the submissions made by the learned Counsel for the parties and the materials on record.

6. During the course of hearing, on being asked as to whether the Insurance Company had sought for leave of the Tribunal as provided u/s 170 of the Act, learned Counsel representing the Insurance Company fairly submitted that no such leave was sought for. Section 170 of the Act provides the right to the Insurance Company to contest the claim of the claimant on all or any of the grounds, which are available to the person against whom the claim is made. This right is without prejudice to the provisions contained in the Sub-section (2) of Section 149 of the Act. u/s 149, it is the duty of the insurance to satisfy judgments and awards against person insured in respect of third party risk.

7. The grounds on which, the insurer is entitled to defend the action have been specified u/s 149(2) of the Act. The grounds are--

(a) That there has been a breach of a specified condition of the policy, being one

of the following conditions, namely--

(i) A condition excluding the use of the vehicle--

(a) For hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) For organized racing and speed testing, or

(c) For a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) Without side-car being attached where the vehicle is a motor cycle; or

(ii) A condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) Condition excluding liability for inquiry caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) That the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

8. The writ petitions against the judgments and awards of the Tribunal are not based on any of the aforesaid grounds. In fact, the question raised by the Division Bench in the writ petition being WP (C) No. 123/2000 is also having regard to the limitations imposed by Section 149(2) of the Act. This necessarily leads to the question as to whether the Insurance Company is entitled to step into the shoes of the owners of the vehicles. Section 170 of the Act provides such a course of action on the grounds of collusion between the person making the claim and the person against whom the claim is made and that the person against whom the claim is made has failed to contest the claim. None of these grounds is also available to the Insurance Company inasmuch as the Insurance Company never agitated the said grounds by taking leave of the Tribunal.

9. u/s 173 of the Act an insurer has a right to file an appeal before the High Court on the limited grounds u/s 149(2) indicated above. 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 the Tribunal does not implead the Insurance Company to contest the claim, in such a situation, it is open to the insurer to seek permission of the Tribunal 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 the Tribunal on merits. Thus, in such a situation, the insurer can question the quantum of compensation awarded by the Tribunal. These aspects of the matter have been discussed above.

10. In the instant case, the Insurance Company has made a challenge to the awards of the Tribunal by filing the writ petitions under Articles 226/227 of the Constitution of India, questioning the quantum of compensation awarded by the Tribunal. Such a course has been adopted in a situation, in which, no leave was sought for from the Tribunal as contemplated u/s 170 of the Act. It is in this context, learned Counsel for the claimants have referred to the decision of the Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, .

11. When the Insurance Company acted in a manner disentitling itself from invoking the discretionary and equitable jurisdiction under Article 226 of the Constitution on account of its failure to seek leave of the learned Tribunal to take the grounds available u/s 170 of the Act, there could not have been any occasion for it to file the instant writ petitions under Articles 226/227 of the Constitution.

12. Above being the position, it is really not necessary for us to answer the questions raised, in this proceeding. The questions raised, truly speaking have become redundant and academic in view of the own conduct of the Insurance Company stated above. The relevancy or otherwise of the questions raised may not be gone into in this proceeding, merely from an academic point of view when the writ petitions could be answered based on the conduct and inaction on the part of the Insurance Company. 13. The writ appeal and the writ petition are answered in the above manner. The writ petitions filed by the Insurance Company are dismissed. There shall be no order as to costs.

Dismissal of the writ petitions will not preclude the Insurance Company to pursue such legal remedies as may be available to them against the owners of the vehicles involved.