

(1992) 12 MP CK 0002

In the Madhya Pradesh High Court

Case No : Civil Rev. No. 531 of 1992 & Civil Revision No. 531 of 1992

Renuka Bai and Others

APPELLANT

Vs

Jai Prakash Sethy and Others

RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140, 145

Citation : (1993) ILR (MP) 294 : (1992) 2 MPJR 454 : (1993) MPLJ 126

Hon'ble Judges : K.L. Issrani, J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; Gulab Sohane, for non-applicant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Issrani, J.

The present revision petition u/s 115 of the CPC is against the order dated 15-9-1992 passed by the Motor Accidents Claims Tribunal, Jabalpur, in Motor Vehicles Case No. 36 of 1992, refusing to allow the application of the claimant-applicant u/s 140 of the Motor Vehicles Act for interim compensation.

In this case, the non-applicant No. 3 Rajendra Singh who is the owner of the truck has been ordered to pay interim compensation of Rs. 25,000/- to the applicant. But the submission of the learned counsel for the applicant is that the non-applicant No. 2 Insurance Company is also liable to pay, which has been wrongly absolved by the lower Court.

A show cause notice was issued. Shri Gulab Sohane, learned counsel for the non-applicant No. 2 Oriental Insurance Company appears. None appeared for other non-applicants. It seems that the aggrieved party i.e. the non-applicant No. 3 Rajendra Singh has not filed any revision petition against the impugned order. In

this revision, the non-applicant No. 3 is represented by Shri R. G. Rai, Advocate, but he was absent when the case was heard finally.

Shri Gulab Sohane, learned counsel for the non-applicant No. 2 Insurance Company has submitted that the present revision of the applicant is not maintainable as held in a Full Bench decision of this Court in *Gaya Prasad v. Suresh Kumar* 1992 MPLJ 485 and also subsequently in *Dimple v. Lajja Ram and 3 others* 1992 (1) MPJR 372. The parties have addressed on merits also. But in case the revision is held to be not maintainable, it will be futile to go into the merits except casually.

The Full Bench decision of *Gaya Prasad v. Suresh Kumar* (supra) is a majority judgment of two Judges Dr. T. N. Singh, J. and K. M. Pandey, J. Justice R. C. Lahoti dissenting. It has been argued by the learned counsel for the applicant that this judgment prohibits non-maintainability of the appeal u/s 173 of the Motor Vehicles Act, 1988, by the owner, driver and the Insurance Company and not by the claimant. The learned counsel for the applicant also placed reliance on an earlier Division Bench decision of this Court in *Krishna Gopal v. Dattatraya* 1971 MPLJ Note 135 : 1971 JLJ 903, in which the Motor Accidents Claims Tribunal was held to be a Civil Court and the order passed by it was held revisable u/s 115, Civil Procedure Code. The other difficulty and apprehension expressed by the learned counsel for the applicant is that in case it is held that the order is not revisable, then he has a very limited scope under Article 227 of the Constitution of India. Thus, the claimant will suffer if no interim compensation is paid to him. The learned counsel for the Insurance Company refutes the argument of the learned counsel for the applicant and submits that the covering note obtained by the owner from the Insurance Company was by committing fraud on the Insurance Company. The payment of policy was made later. He supports the order passed by the Claims Tribunal.

Two questions were referred to the Full Bench in two separate appeals. In the present case, the question No. 1 in M. A. No. 64 of 1991 is only relevant which is as under :

"Whether the Insurer and/or the owner/driver of the offending motor vehicle or vehicles against whom an order of compensation is passed in terms of the provisions of Section 140, Motor Vehicles Act, 1988 has a right of appeal against that order u/s 173 of the Act?"

This question has been finally answered as per majority judgment as under:

"First question arising out of Misc. Appeal No. 64 of 1991 is answered, as per majority opinion, in the negative. No appeal is maintainable u/s 173, Motor Vehicles Act, 1988, against an order of compensation for "no fault" liability, passed u/s 140 of the said Act. Law laid down to the contrary in *Oriental Insurance Co. v. Preetamlal* 1989 MPLJ 580 : 1989 ACJ 1129 would no longer hold good and that decision is overruled."

Dr. T. N. Singh, J., while writing the main judgment has considered the effect of Section 140 under Chapter X of the Motor Vehicles Act and has held that Chapter X is a complete Code which is supposed to deal with all matters concerning "liability without fault in certain cases" and that position is buttressed by Section 168(1) proviso, mandating disposal of the claim in that regard as per provisions only of Chapter X and thereby excluding applicability of the provisions of Chapter XII which contains Section 168 as also Section 173. No provision for any appeal against the order passed u/s 140 is contemplated in the said Chapter. According to Dr. T. N. Singh, J. although the order passed u/s 140 disposes of finally one part of the claim, the proceedings do not terminate and they continue till final "award" is passed u/s 168. The anxiety of the applicant regarding the arbitrary dismissal of the application of the claimant has also been dealt with by saying :

".... Then the Tribunal refuses arbitrarily to pass an order u/s 140, the claimants would not be remediless. High Courts, where appeals u/s 173 are heard, possess supervisory jurisdiction under Article 227 of the Constitution to give them due relief with greater expedition."

Hon"ble K. M. Pandey, J. agreeing with Hon"ble Dr. T. N. Singh, J., has also held :

"A question may arise about the remedy available to a person, if the compensation u/s 140 is arbitrarily refused, I think, the Legislature has taken care of it. The Courts of District Judges functioning as Claims Tribunals are expected to be careful about the intention of the Legislature and the right of the claimant. Not only this, but the High Court can also interfere in its supervisory jurisdiction under Article 227 of the Constitution."

Hon"ble Lahoti, J. while dissenting with the majority view, has placed much reliance on the case of this Court reported in Krishna Gopal v. Dattatraya 1971 MPLJ Note 135 : 1971 JLJ 903 and also on a Full Bench decision of Patna High Court in Anirudh Prasad Ambasta and Others Vs. State of Bihar and Another, and so also on a decision of Andhra Pradesh in United India Insurance Co. Ltd. Vs. Katukuri Raghavareddy and Others, . According to him, in the event of a claimant being wrongly denied compensation under "no fault liability" clause, he too would have a right of appeal giving a wider scope of hearing than what is permitted in revisional jurisdiction or in exercise of powers of superintendence under Article 227 of the Constitution. He was of a definite view that an order of compensation passed in terms of Section 140 is an "award" appealable u/s 173. But the majority view was that no appeal lies u/s 173 of the Motor Vehicles Act, 1988, against an order of compensation for "no fault liability" passed u/s 140 of the Act. The law laid down to the contrary in Oriental Insurance Co. Ltd. v. Pritamlal. 1989 MPLJ 580 was held to be no longer good and the decision was overruled. Subsequently, Hon"ble Dr. T. N. Singh, J. in Dimple v. Lajja Ram (supra) came to decide the point whether the order is revisable by the High Court or not and held "no". According to him, the order passed for interim compensation u/s 140 of the Act is an interim order and not revisable. While passing the judgment he has again considered the effect of the judgment and

has come to the conclusion while interpreting the provisions of Section 4 of the CPC as under:

"A plain and simple reading of Section 4 makes it clear that "nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred." Power to make an order u/s 140 is a special power conferred on the Claims Tribunal under Special Law and any order passed by the Tribunal in exercise of that power is not to be effected obviously in any manner by any provisions of CPC including Section 115, Civil Procedure Code. For that holding, inspiration may also be invoked from Shah Babulal Khimji. Obviously the High Court in dealing with any matter arising out of a proceeding before the Claims Tribunal under the Motor Vehicles Act would be exercising its jurisdiction with reference to provisions of that Act and not of CPC and it would be exercising "special jurisdiction" under that Act and it has to find powers for interfering with any order passed in that proceeding in revision not outside that Act; revision being not contemplated under the new Act that jurisdiction the High Court cannot assume unauthorisedly."

In view of the Full Bench decision and the subsequent Single Bench decision referred to above, I am of the opinion that the present revision petition by the applicant claimant, whose application is not wholly rejected but only an order against the owner is passed, is not maintainable. If aggrieved he may approach this Court under Article 227 of the Constitution of India.

Dealing with the facts casually, I do not find the order of the lower Court exonerating the Insurance Company from payment of compensation, though interim, u/s 140 of the Motor Vehicles Act. Not only the owner but also the insurer is liable to satisfy the award made u/s 140 of the Act. Section 145(c) defines "liability" as under:

" "liability", wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof u/s 140".

Under Section 147(1) of the Act, a policy of insurance must insure the insured against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. It, therefore, follows that the Insurance Company is liable to indemnify the insurer for compensation awarded u/s 140 of the Act.

In the present case, the applicant has filed the photo-copy of the covering note which commences the liability of the Insurance Company with effect from the midnight of 2-2-1992 i.e. from 3-2-1992 to 2-2-1993. As per definition u/s 145 of the Act in Clause (d) "policy of insurance" includes "certificate of insurance". Clause (b) of Section 145 defines "certificate of insurance" as under :

"certificate of insurance" means a certificate issued by an authorised insurer in pursuance of Sub-Section (3) of Section 147 and includes a cover note complying

with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

In this case, admittedly, a cheque was encashed by the Insurance Company on 4-2-1992 and the policy is not cancelled by the Insurance Company. Though the accident took place on 4-2-1992, it will not absolve the Insurance Company from its liability to make payment. The liability of the Insurance Company is joint and several. But for the reason of the non-maintainability of the present revision petition discussed above, I do not want to interfere sitting singly in the order passed by the lower Court against the view of the Full Bench referred to above.

Consequently, the revision petition is dismissed. The applicant, if so desires, may take recourse under Article 227 of the Constitution of India.