
(2012) 01 GAU CK 0076
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 214 of 2005

Rina Sutradhar

APPELLANT

Vs

Prasenjit Saha And Ors.

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Citation : (2012) 4 GLR 6

Hon'ble Judges : S.Talapatra, J

Bench : Single Bench

Advocate : Ms. P. Dhar for the petitioner,??Mr, B. Debnath for the respondents.,
Advocates appearing for Parties

Judgement

1. Heard Ms. P. Dhar, learned counsel appearing for the petitioner as well as Mr. B. Debnath, learned counsel appearing for the claimantrespondent No. 1. None appears for the respondent Nos.2 and 3.

2. This petition is filed under article 226 read with article 227 of the Constitution of India challenging the order as passed by the learned tribunal in Civil (Review) Misc. No. 276/2002 arising put of TS(MAC) No.265 of 1997 Which was disposed of by the judgment and award dated 13v8v2002 by Imposing the liability of payment of 50% of the awarded compensation by the petitioner &s she could not submit the necessary insurance paper as well as the driving license at the time of the trial. For certain reasons the petitioner could not keep track of the trial of the case and when she got the knowledge of that judgment and award dated 13.8.2002, she immediately filed a petition under order 47, rule 1 of the CPC read with section 151 of the CPC for reviewing the judgment in view of the records that could not be produced for reasons as disclosed in that petition and for modification of the award to the extent of the liability of payment of the 50% of the award.

3. The learned Tribunal below by the impugned order dated 22.11.2004 refused to interfere with the judgment and award passed on the ground that "for review

seems to be not an appropriate redress". Learned Tribunal also observed while rejecting the said petition that the learned Tribunal did not act illegally by imposing 50% of the liability for the lapse of the petitioner as committed by not producing the relevant documents before the court.

4. It is really surprising how the learned Tribunal below can take away the benefit of indemnity as entered into between the respondent No.3 and the petitioner under section 125 of the Contract Act in the form of the insurance policy and shift that liability from the insurer to the petitioner when the accident has been proved and the liability so arose therefrom is indisputably indemnified by the insurer. The lapse that was pointed out was later on endeavored to be compensated. But that was not considered an appropriate redress. Thus, the petition was rejected.

5. This court in catena of decisions held that the review is the appropriate remedy which can be availed in such cases.

6. Ms. Dhar, learned counsel appearing for the petitioner drew attention of this court to the decision as reflected in the judgment and award dated 25.7.2002 as passed in TS(MAC) No. 264 of 1997 arising out of the same accident and contended that in that judgment and award the liability was shared by the same insurance company, the respondent No.3 as the insurer for both the vehicles involved in the accident. In that case, entire liability of the payment of the compensation was shifted to the insurer as per law as stated.

7. In view of this, the order passed in the review petition, is set aside. It is directed that the respondent No.3, National Insurance Company Ltd. the insurer of the vehicle of the petitioner shall pay the 50% of the liability, i.e., of the awarded compensation along with interest as indicated in the judgment and award dated 13.8.2002 passed in TS(MAC) No. 265 of 1997 to the claimant respondent No. 1 within such period as stipulated in that judgment.

Accordingly, this petition is allowed.

No order as to cost.