(2020) 08 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 85 Of 2009, IA No. 94 Of 2009

Satish Singh Jamwal APPELLANT

Vs

Presiding Officer MACT And Others RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 173
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 20
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 08 J&K CK 0014

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : B.S. Manhas

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. I have gone through the contents of the petition and a perusal whereof indicates that the petitioner is aggrieved and has challenged the award dated 29.03.2005 passed on the principle of 'No Fault Liability' by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the 'Tribunal') under section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') in claim petition titled 'Tarsem Lal Vs. Tilak Sharma' whereby the claimant Tarsem Lal has been held entitled to a compensation of Rs. 25,000/-.

2. The petitioner has invoked the supervisory jurisdiction of this Court to challenge the award passed on the principle of 'No Fault Liability' by the Tribunal on the ground that the injured was pillion rider on the offending Motorcycle and, therefore, was not entitled to any compensation including the 'No Fault Liability' compensation payable under section 140 of the Act.

3. It may be noted that the award has been passed under section 140 of the Act and, therefore, the person aggrieved has a remedy provided under the Act. The

petitioner, therefore, cannot be permitted to scuttle the statutory remedy provided under the Act and directly approach this Court by way of filing the petition under Article 227 of the Constitution of India.

4. The legal position in this regard is well settled in the case of Punjab National Bank v. O.C. Krishnan and Ors. (2001)6 SCC 569 wherein, the Hon'ble Supreme Court held that in view of the remedy of appeal available under Section 20 of the Act of 1993, a petition under Article 227 was not entertainable. The Hon'ble Supreme Court in that case observed as under:-

"The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filling of an appeal under Section 20 and this fact track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Article 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions."

5. From the above observations made by the Hon'ble Supreme Court, it is very much clear that the present petition under Article 227 of the Constitution of India is not maintainable, as an alternative remedy of appeal under Section 173 of the Act is available.

For the foregoing reasons, the present petition is found to be not maintainable. The same is, accordingly, dismissed.

