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**(1994) 06 SHI CK 0006**  
**In the High Court Of Himachal Pradesh**  
**Case No : Writ Petition No. 27 of 1993**

Sikkim Ayurvedic (Pvt.) Ltd.

APPELLANT

Vs

Pyari Tamangni and Others

RESPONDENT

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**Date of Decision :** 07-06-1994

**Acts Referred:**

Constitution of India, 1950 — Article 226

Motor Vehicles Act, 1988 — Section 149

Workmens Compensation Act, 1923 — Section 30

**Citation :** (1996) 3 LLJ 844

**Hon'ble Judges :** S.N. Bhargava, C.J

**Bench :** Single Bench

**Advocate :** A.K. Upadhyaya, for the Appellant; S.P. Wangdi, for Respondent No. 1, B. Sharma and N.P. Sharma, G.A., for the Respondent

**Final Decision :** Allowed

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## Judgement

S.N. Bhargava, C.J.—This is a Writ Petition under Articles 226/227 of the Constitution of India. The petitioner is a Private Ltd. Company registered under No. SKM 5787 wherein, one Tirtha Tamang was employed as a cleaner. The said vehicle met with an accident on March 7, 1990 as a result of which Tirtha Tamang died. Respondent No. 1, being the widow of late Tirtha Tamang, filed a claim for compensation before the Commissioner for Workmen's Compensation and against the present petitioner and Respondent No. 2, the National Insurance Company Ltd., where the said vehicle was insured. Both the petitioner and Respondent No. 2 filed their replies and contested the petition. Learned Commissioner after hearing the parties passed an award on July 22, 1993 holding that the dependents of the deceased workmen are entitled to an amount of Rs. 35,581/- as compensation and directed the petitioner to deposit the said amount with the Commissioner and further held that the Insurance Company cannot be made to pay the amount directly. He also observed that it was open to the employer to recover the amount by filing a suit in a competent Court if he so desires. It is against this order of the learned Commissioner that the present writ

petition has been filed and the only prayer made therein is that the award should be modified to the extent that instead of the petitioner, Respondent No. 2 should be directed to deposit the compensation amount awarded by the Commissioner. Notices were issued to the respondents. Respondent No. 2 has filed a counter contesting the writ petition on the ground that the writ petition is not maintainable in the present form as well as in law and that the petitioner ought to have resorted to the remedy of appeal provided u/s 30 of the Workmen's Compensation Act (herein referred to as the Act of 1923). Respondent No. 2 has also asserted that the said vehicle did not belong to the petitioner as the registration is in the name of one J. K. Pradhan. It has further been submitted that the deceased Tirtha Tamang was not employed as a cleaner in the said vehicle.

2. I have heard learned counsel for the parties and also perused the records of the case.

3. Learned counsel for the petitioner has very vehemently submitted that the learned Commissioner seriously erred in law in not making the Insurance Company liable to pay the compensation. In this connection he drew my attention to Section 149 of the Motor Vehicles Act, 1988 which is similar to Section 96(1) of the old Motor Vehicles Act of 1939. It provides that "If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section. 147 (being a liability covered by the terms of the policy) is obtained any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable : thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment." In this connection, he drew my attention to Northern India General Insurance Co. Ltd., Bombay Vs. Kanwarjit Singh Sobti and Others, and Mst. Kamala Devi Vs. Navin Kumar and Another, .He has further submitted that since the petitioner is not challenging the amount of the : award, it was not necessary for him to file the appeal under the Workmen's Compensation Act as it is an admitted fact that the said vehicle was insured with Respondent No. 2. It was the Insurance Company who is liable to pay the compensation amount and since the Insurance Company was a party before the commissioner and it has not preferred any appeal against the award given by the Commissioner, this became final and the Insurance Company cannot challenge the same either on merits or on the quantum of the award and escape from liability.

4. At the very outset, the learned counsel for the Insurance Company, Respondent No. 2, has submitted that the present writ petition is not

maintainable as it involves disputed questions of fact and the petitioner has an alternative remedy of appeal under the Workmen's Compensation Act and, therefore, the writ petition be dismissed summarily. In this connection he has placed reliance on Union of India (UOI) Vs. T.R. Varma, The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others, and Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, He also drew my attention to sub paragraph (12) of note 4 at page 460 of the 35th volume of AIR Manual, Fourth Edition and placed reliance on 1982 TAG 43 (not available).

5. The learned counsel for the petitioner in reply has asserted that he has no alternative remedy and even if there was an alternative remedy it was not adequate under the circumstances. Moreover alternative remedy is not a bar in invoking the writ jurisdiction of the High Court. In this connection he has placed reliance on Smt. Narmada Choudhury and Others Vs. Motor Accident Claims Tribunal and Others, and Bhaskarbai v. Ramanlal AIR 1978 GUI 158 as also. Item (7) of Note 1 at page 467 of volume 35 of the AIR Manual Fourth Edition placing reliance on 1984 Lab IC 80 and 1983 85 PLR 317 (both not available.) He has further submitted that since the petitioner has not challenged the quantum of the compensation there were no disputed facts to be decided by this Hon"ble Court.

6. I have given a thoughtful consideration to the submissions made at the Bar and I have also gone through the record of the case and the authorities relied on by the learned counsel for the parties.

7. It is an admitted fact that the vehicle bearing registration No. SKM 5787 was insured with the National Insurance Company Ltd. It is also admitted fact that the vehicle met with an accident on March 7, 1990, as a result of which one Shri Tirtha Tamang died. Thereupon his widow filed a compensation case in the Court of the Commissioner for Workmen's Compensation wherein the petitioner and the National Insurance Company were made a party. The claim was contested not only by the petitioner but also by the National Insurance Company. The Company had also filed its written submission and had contested the claim petition on all the points. As a result of the submissions, the learned Commissioner was pleased to frame the following issues:

(1) Whether deceased Tirtha Tamang was a workman as per the provision of the Workmen's Compensation Act, 1923.

(2) Whether deceased died in the course of employment,

(3) Whether deceased Tirtha Tamang was employed under the Sikkim Ayurvedic concern of the defendant.

(4) Whether dependants of the deceased workmen is entitled to the compensation.

Two more issues were added on July 5, 1993-

- (1) Whether the claim is barred by the principles of the law of Limitation; and
- (2) Whether the National Insurance Company can be made liable to pay compensation under the Workmen's Compensation Act.

Parties were given ample opportunity to present their case and after hearing them at length, the learned Commissioner was pleased to hold that the dependents of the deceased workmen were entitled to an amount of Rs. 35,581/- as compensation and further held that he had no authority to direct the Insurance Company to pay the compensation. None of the parties have filed any appeal against this award. Therefore, it is not open to the Insurance Company to challenge the award on merits. The only point to be decided in the present writ petition is whether the Commissioner should have asked the Insurance Company instead of the petitioner to pay the compensation and whether he should have given an option to the petitioner to recover the amount by filing suit in a competent Court. This is purely a legal point.

8. Since there are no disputed questions of fact to be decided by this Court in this writ petition the first preliminary question raised by Respondent No. 2 is rejected outright. Now coming to the objection regarding alternative remedy. I am of the view that filing of the appeal is not an adequate or effective remedy. Before filing the appeal, the petitioner was obliged to deposit the whole amount of the award in the Commissioner's office. I am reminded of very weighty observations of the Hon'ble Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, which has been followed and relied on by all the High Courts and also the Supreme Court in its subsequent decisions and also the observations in *M.G. Abrol Vs. Shantilal Chhotalal and Co.*, wherein it was observed that mere existence of an alternative remedy does not bar the jurisdiction of the High Court to entertain petitions for issuance of a writ of certiorari in appropriate cases. It is true that alternative remedy ordinarily inhibits a prerogative writ. But it is not an impassable hurdle and is not a bar in exercising its writ jurisdiction under Articles 226 and 227 of the Constitution of India. Limitation, that the High Court will not ordinarily issue a writ in favour of a person who has an adequate, alternative remedy is a self-imposed limitation. But if on the undisputed facts and materials on record, it appears that the impugned order is not in accordance with law, then the High Court will be well within its power in entertaining a writ petition, notwithstanding the availability of an alternative remedy. There are number of authorities in support of this proposition. It has been constantly held by the various High Courts and the Supreme Court that existence of an alternative remedy does not bar the jurisdiction of the High Court to entertain petitions for issuance of writs of certiorari in appropriate cases. *Calcutta High Court in Anglo India Jute Mills Co. Ltd. Vs. S.K. Dutt and Another*, ; *S.K. Dutt, Income Tax Officer and Another Vs. Anglo-India Jute Mills Co. Ltd.*, , *Ratanlal Singhanian and Others Vs. M.M. Sethi and Others*, following *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, has held that where the statute requires

the petitioners to deposit the full amount of compensation before filing of an appeal, an alternative remedy provided in the statute being onerous and burdensome is not an alternative remedy. The same view was again taken in *Calcutta Chemical Co. Ltd. Vs. The Assistant Collector of Customs and Others*, relying on *U.P. State v. Modh. Nooh* AIR 1958 SC 86. Similar view has also been taken by Andhra Pradesh High Court in *B. W. Von Maltazan v. Collector of Customs* AIR 1958 AP 122. The Punjab and Haryana High Court has in *Prem Chand v. State of Punjab* AIR 1991 P & H 50 following earlier view in *Dayal Krishnan Vs. Assessing Authority-cum-Excise and Taxation Officer (Enforcement) and Others*, expressed the same view. The Supreme Court in *M.G. Abrol Vs. Shantilal Chhotatalal and Co.*, has held:-

" A remedy by way of an appeal against the order of the confiscation and imposition of a large penalty under the Sea Customs Act is not an effective remedy, when no appeal can be filed unless the large penalty imposed upon the petitioner has first been deposited."

Thus we find that there is unanimous opinion of all the High Courts as well as the Supreme Court that the existence of a right to appeal does not bar the jurisdiction of the High Court to entertain, in appropriate cases, a petition for the issue of writ of certiorari. Ordinarily, the High Court does not interfere until the party aggrieved by the order of a quasi-judicial authority has exhausted the statutory remedies, if any, available to him. This rule is of policy, convenience and discretion rather than a rule of law. If the said authority acts without, or patently in excess of jurisdiction or does not observe the principles of natural justice and fair play or takes an illegal view, the High Court though a remedy for an appeal lies and the party aggrieved did not avail of that remedy, would be competent to issue a writ of certiorari to correct the said order. If the alternative statutory remedy is onerous or is not equally efficacious or for other sufficient reasons, the High Court may examine the validity of acts done by the said authority, notwithstanding alternative remedy. The question is one of discretion and not jurisdiction. There is no inflexible rule that writs cannot be issued if an alternative remedy is available. It is for the Court to decide what is just and convenient. Even the authorities relied by the learned counsel for the Insurance Company observed that the existence of alternative remedy does not curtail the jurisdiction of the High Court to issue a writ. However, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 unless there are good grounds therefor.

9. Referring to Section 149 of the Motor Vehicles Act, 1988, it is evidently clear that the Insurance Company is in the nature of a judgment-debtor to the extent that it is liable to indemnity and pay the amount of compensation as per the award passed against the owner of the vehicle. By virtue of Section 149 of the Motor Vehicles Act, the insurer will be treated as a judgment-debtor for the

purpose of making the recovery of the compensation. I am fully supported in this view by the observations made by the Rajasthan High Court in *Kamal Devi v. Navin Kumar* (supra). Reference in this connection may also be made to *Bhaskarbai v. Ramanlal* (supra) and the observations of Gauhati High Court in *Narmada v. Motor Accident Claims Tribunal, Kamrup* (supra). Principles of Section 149 of the Motor Vehicles Act, 1988 are applicable to applications under the Workmen's Compensation Act 1923. Even the learned Commissioner has not disputed the liability of the Insurance Company to pay but he had advised the petitioner to recover the amount by filing a separate suit in a competent Court. This will only amount to multiplicity of proceedings and invoke burden on the petitioner as he would have to first pay the awarded compensation and then file a suit in a competent Court to recover the said amount. But in the present case, the Insurance Company was a party before the Commissioner and whatever it had to say was raised before the learned Commissioner and therefore, it is bound by the decision of the Commissioner and cannot challenge the decision on merits as it had not filed any appeal against the said order/award which has become final as far as the Insurance Company is concerned. Learned counsel for the petitioner has also placed reliance on 1985 MPLJ 114 noted in Item (12) of Note 4 at page 460 of the 35th Volume of AIR Manual. But that citation is not available. Since there is a heavy backlog of cases, it will not be proper to direct the petitioner to institute a suit in a competent Court especially when the petitioner has approached this Court. It cannot be disputed that u/s 149 of the Motor Vehicles Act, the Insurance Company is charged as a judgment-debtor, especially when it was a party to the compensation proceedings and had full opportunity to challenge the claim petition as it did, in the present case. Under Article 226, this Court under its extraordinary writ jurisdiction has no bar or restriction to give relief which is most just and proper.

10. As such the present writ petition is allowed and the award of the learned Commissioner is modified to the extent that the amount of compensation decided by the Commissioner should be paid by the Insurance Company instead of the petitioner. The accident had taken place on March 7, 1990 and the claim had been pending for nearly three years and the widow of the deceased has to support her 7 minor children. Therefore, the Insurance Company is directed to pay the amount to the claimants within two months from today. Parties are left to bear their own costs.