

(2008) 11 RAJ CK 0053
In the Rajasthan High Court

Smt. Imiya

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 18-11-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140, 173

Citation : (2009) 1 RLW 839 : (2009) 1 WLN 400

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—This writ petition by the claimant- petitioner is directed against the order dated 06.01.2005 as passed by the Motor Accidents Claims Tribunal, Barmer whereby the learned Tribunal has proceeded to allow a review application filed by the respondent No. 1 United India Insurance Company Ltd. and has recalled the order dated 24.09.2004 that was passed u/s 140 of the Motor Vehicles Act, 1988 ("the Act").

2. Briefly put, the background facts and relevant aspects of the matter are that the claimant-petitioner lost her husband Sheraram in a vehicular accident that occurred on 20.07.2002 on National Highway No. 15 near Varahai for collision of two vehicles bearing registration Nos. GJ-12AV-5255 and RJ04/G-0755. The claimant-petitioner and the parents of the deceased Sheraram have filed a claim application u/s 166 of the Act against the drivers, owners and insurers of both the vehicles involved in the accident while stating that the victim Sheraram was occupying the cabin of the vehicle bearing registration No. GJ-12/W-5255 and died for the injuries sustained in the accident. Along with the claim application, the claimants also filed an application u/s 140 of the Act claiming Interim compensation in the sum of Rs. 50,000/- while stating joint and several liability of all the persons related with the vehicles involved in the accident.

3. While dealing with the said application u/s 140 of the Act, the learned Tribunal

observed in its order dated 24.09.2004 (Annex.2) that at the given stage, the only relevant aspects were as to whether there had been a vehicular accident involving the vehicle in question that led to the demise of the victim; and, after finding that such essential facts were available on record; and, while observing that no other aspect was required to be considered at the given stage; and while keeping the other objections of the non-applicants pending for consideration at the time of final disposal, proceeded to allow the application and directed the non applicant No. 3, the insured of the vehicle bearing No. RJ-04-G-0755 (the present respondent No. 1, United India Insurance Company Ltd.) to make payment of the amount of Rs. 50,000/- towards interim compensation with the stipulation that for nonpayment within one month, it shall carry interest @ 6% per annum from the date of filing of the claim application. The relevant part of the said order dated 24.09.2004 reads as under:

eSus izkFkhZ@izkFkhZx.k dh rjQ ls izLrqr nLrkostks dk voyksdu fd;k A bl LVst ij dsoy ek= ;g ns[kuk gS fd D;k okgu nq?kZVuk gqbZ] okgu nq?kZVuk es mijksDr okgu fyIr jgk] rFkk nq?kZVuk ls pksVs vk;h @ e`R;q gqbZ A nLrkostkr i=koyh ds voyksdu ls okgu nq?kZVuk gksuk] okgu dk fyIr gksuk rFkk Jh "ksjjke ds pksVs vkuk@e`R;q gksuk izekf.kr gS A vU; fdlh rF; ij bl le; fopkj ugh fd;k tk ldrk gS A foizkFkhZx.k us vius tckc esa tks vkifRr;ka mBkbZ gS] mUgs bl LVst ij dUihMj ugh fd;k tk ldrk A vr% foizkFkhZx.k }kjk mBkbZ x;h vkifRr;ksa dks lqjf{kr j[krs gq, fuEu varfje iapkV ikfjr fd;k tkrk gSA

varfje iapkV

;g varfje iapkV bl izdkj ikfjr fd;k tkrk gS fd izkFkhZ@izkFkhZx.k :i;s 50]000@& foi{kh la;k 3 U.I. Insu. Co. Station Road, Barmer ls la;qDr ,oa Ik`Fkd Ik`Fkd :i ls Hkh izkIr djus ds vf/kdkjh gSA varfje iapkV jkf"kd Hkqxrku ekg ,d esa vnk u djus ij ckn laLFkkiu dks fnukad 2-12-2002 ls 6 izfr"kr lk/kkj.k C;kt ns;k gksxk A Note- 50]000@& :- dh vnk;xh dk nkf;Ro vizkFkhZ dze la- 3 dk gksxkA

4. The respondent-insurer (the non-applicant No. 3), however, filed a so-called review application, purportedly under Order XLVII Rule 1 of the CPC ("CPC") with the submissions, inter alia, that in relation to the incident in question the Investigating Agency riled a Final Report ("FR") that was not produced by the claimants and such report was not in its knowledge at the relevant time and hence, can not be referred earlier; and that the said FR was produced in another Claim Case No. 50/2003 relating to the same accident that was pending before the same Tribunal. The insurer (non-applicant No. 3) submitted that the said FR suggestive of the finding that the accident occurred for the fault of the deceased Sheraram was required to be considered; and prayed that the order as passed on 24.09.2004 may be recalled.

5. The learned Tribunal by its impugned order dated 06.01.2005 (Annex.4) proceeded to observe after perusing the documents produced that the responsibility towards accident was a matter of evidence and the position would be clear only upon production of evidence by the parties and, on these

considerations, allowed the review application and recalled the Order dated 24.09.2004 while observing that the application u/s 140 of the Act would remain pending and shall be decided at the time of final disposal of the main claim application. The learned Tribunal observed and ordered thus:

bl laca/k esa i=koyh dk voyksdu fd;k x;k rFkk izLrq nLrkost dh Hkh voyksdu fd;k x;k A oDr nq?kZVuk fdl okgu] pkyd dh xyrh jgh ;g lk{; dk fo"k; gS rFkk bl lEcU/k esa ewy izkFkZuk i= esa lk{; izLrqr gksus ij gh lgh fLFkfr lkeus vk ldrh gS ,slh fLFkfr esa izkFkhZ chek dEiuh }kjk izLrqr ;g fjO;w izkFkZuk i= Lohdkj dj bl vf/kdj.k }kjk nh-fo-la- 117@02 esa ikfjr vkns"k fnukad 24-9-2004 dks vikLr fd;k tkrk gS rFkk mDr izdj.k dks yfEcr j[krs gq, ewy izdj.k ds vfUre fuLrkj.k ds le; gh /kkjk 140 ,e-oh- ,DV ds izkFkZuk i= dk foLrkj.k fd;k tk;sxk A ;g i=koyh QSlylqekj gksdj layXu ewy izdj.k ds jgs rFkk izdj.k la- 117@2002 dh i=koyh Hkh ewy Dyse izkFkZuk i= ds lkFk layXu fd;k tk;sA

6. Challenging the aforesaid order dated 06.01.2005, the claimant-petitioner has filed this writ petition and learned Counsel for the petitioner has strenuously contended that the Tribunal has been fundamentally in error in dealing with and allowing the so-called review application filed by the respondent-insurer though, according to the learned counsel, neither such review application was competent before the Tribunal concerned nor the order passed u/s 140 of the Act could have been recalled purportedly on the insurer raising the question about responsibility towards the accident. Learned Counsel emphasized on the submissions that the interim award u/s 140 of the Act is essentially considered and made on the principles of no fault liability; and when the question of fault is not even germane to such an application, the claimant could not have been denied interim compensation during pendency of the claim application.

7. On the other hand, learned Counsel for the contesting respondent No. 1 insurer vehemently and elaborately contended in the first place that the petitioner is not entitled for any relief in the writ jurisdiction of this Court and the impugned order calls for no interference under Article 227 of the Constitution of India; and in that regard referred to the decision of the Hon'ble Supreme Court in *Sadhana Lodh v. National Insurance Co. Ltd.* and Anr. 2003 (2) WLC (SC) 255 and of this Court in *Manikyapuri Housing Co-op. Society Vs. Mahesh Chaturvedi and Another*, Learned Counsel further contended that the petitioner could have challenged the order impugned by way of a regular appeal u/s 173 of the Act and in that view of the matter also, no interference is called for under Article 227 of the Constitution of India. Learned Counsel further submitted that the review application as moved before the Tribunal was competent because the Rules under the Motor Vehicles Act are silent in that regard and the principles of CPC would apply particularly when the Tribunal has all the trappings of Civil Court. Learned Counsel submitted that when the basic questions involved in this matter are required to be decided at the time of final decision of the claim application, no case for interference is made out under Article 227 of the Constitution of India. Learned Counsel also submitted that the respondent-insurer had rightly moved

the review application and the Tribunal has rightly recalled the order earlier passed; and that the claimants having concealed the facts about the relevant Final Report, are not entitled for any relief.

8. Having given a thoughtful consideration to the rival submissions and having gone through the record, this Court is clearly of opinion that the impugned order cannot be sustained and this writ petition deserves to succeed; and for that matter, deserves to be allowed with costs.

9. The principles relating to the supervisory jurisdiction of this Court under Article 227 of the Constitution do not call for much discussion or debate. It has been observed by the Hon''ble Supreme Court in *Sadhana Lodh's* case (*supra*) thus:

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

10. The present one is clearly a case where, to say the least, the Tribunal has acted wholly without jurisdiction and even contrary to the very scheme of the provisions it was dealing with; and the impugned order, if allowed to stand, would occasion in grossest failure of justice. The present one is clearly a case calling for intervention of this Court in its supervisory jurisdiction. The submission that the impugned order is open to appeal has only been noted to be rejected. The order impugned has been passed on a so-called review application and such an order cannot be said to be open to appeal u/s 173 of the Act. The submission that there had been concealment on the part of the petitioner claimant also remains bereft of substance particularly because any finding in such FR has no bearing whatsoever on the consideration of the application u/s 140 of the Act and this Court finds no reason as to why the said order should not be interfered with in the writ jurisdiction.

11. The Tribunal as constituted under the Motor Vehicles Act while dealing with the claim application even when having the trappings of the Civil Court, its jurisdiction is specifically defined by the statutory provisions and the rules framed thereunder. So far the powers of the Civil Court that are vested in the Claims Tribunal and procedure to be followed by the Claims Tribunal are concerned, such aspects have specifically been delineated in Section 169 of the Act and Rule 10.27 and Rule 10.28 of the Rajasthan Motor Vehicles Rules, 1990. Significant it is to notice that the provisions of Section 114 CPC or Order XLVH Rule 1 CPC, relating to powers of review have not, as such been made applicable

to the proceedings before the Claims Tribunal: The Tribunal, in the opinion of this Court, had no jurisdiction to deal with a so called review application moved under Order XLVH CPC and the impugned order, passed on a so-called review application, cannot be upheld.

12. Apart from the aforesaid, and even if it be assumed for the sake of arguments that any such review application could have been considered by the Tribunal, noteworthy it is that the Tribunal while passing its initial order dated 24.09.2004 had precisely taken into consideration the fact that it were an application u/s 140 of the Act wherein the aspects relevant were about the involvement of vehicle and causing of death or permanent disability. The Tribunal was also conscious of the position that the responsibility towards the accident or any other fact or factor were not to be considered at the given stage while dealing with the application u/s 140 of the Act. It is rather strange to notice that despite having passed the order u/s 140 of the Act while taking note of true position of law, the very same Tribunal proceeded to allow the so-called review application in a wholly cursory manner while observing that the responsibility towards accident would be a matter to be considered and decided at the time of final decision of the case and, therefore, proceeded as if the claimants were to be deprived of even the interim compensation u/s 140 of the Act pending determination of such questions relating to responsibility towards accident. The approach of the Tribunal cannot be countenanced from any angle.

13. The facts are undeniable that the victim Sheraram met with his untimely end for having sustained fatal injuries in the vehicular accident that involved the vehicle bearing registration No. RJ-04/G-0755 insured by the respondent No. 1. The liability, thus, of the respondent No. 1 to pay compensation in accordance with Section 140 of the Act remains unquestionable; and the claim for compensation under Sub-section (1) of Section 140 of the Act was not to be defeated for the reason of allegation of any wrongful act, neglect or default Of the victim concerned, per Sub-section (4) of Section 140 of the Motor Vehicles Act, 1988. The order dated 24.09.2004 was passed precisely in accord with the operation of the provisions of Section 140 of the Act and there was nothing to be reviewed or reconsidered in the said order. The approach of the insurer in filing review application cannot be considered anything less than an attempt to avoid the statutory liability and to misdirect the considerations of the Tribunal; and the result has been that the claimant stood deprived even the bare minimum statutory entitlement u/s 140 of the Act though such provisions have essentially been made for the purpose of extending immediate relief to the sufferers of the results of the vehicular accident. This writ petition deserves to be allowed and the impugned order dated 06.01.2005 deserves to be set aside, the order dated 24.09.2004 deserves to be restored; and at the same time, in the facts and circumstances of the case, the payment of the entire amount as payable under the said order dated 24.09.2004 and so also this order, deserves to be made the condition precedent for the respondent No. 1 to take part In any further proceedings before the Tribunal in the main claim application.

14. Accordingly, this writ petition is allowed the impugned order dated 06.01.2005 is set aside; and the order dated 24.09.2004 stands restored for immediate compliance by the respondent No. 1. The petitioner shall also be entitled to costs of this writ petition from the contesting respondent No. 1, quantified at Rs. 5,500/- (five thousand five hundred). The payment of the entire amount payable under the order dated 24.09.2004 as passed by the Tribunal and as required by this order shall be the condition precedent for the respondent No. 1 to participate in the further proceedings before the Tribunal.

A copy of this order be forwarded immediately to the Tribunal concerned.