

(1999) 05 CAL CK 0016

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 2094 of 1993

Smt. Sandhya Mondal

APPELLANT

Vs

Sri Aloke Chandra Poddar and Another

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Constitution of India, 1950 — Article 227

Motor Vehicles Act, 1988 — Section 140, 143, 144, 165, 167

Workmens Compensation Act, 1923 — Section 140, 140(2), 141, 142, 158

Citation : (2000) 1 ACC 117 : (2000) ACJ 642 : (1999) 2 CALLT 410 : (1999) 1 CHN 162

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Mr. Dulal Chandra Roy, for the Appellant;

Judgement

B. Bhattacharya, J.—This revisional application under Article 227 of the Constitution of India is at the instance of claimants of compensation under the provisions of the Motor Vehicles Act, 1988 ("Act") and is directed against Order dated March 16, 1993 passed by the Motor Accidents Claims Tribunal, 6th court, Alipore in M.A.C.C. No. 165 of 1991 thereby awarding compensation of Rs. 25,000/- in favour of the petitioners against the owner of vehicle in terms of section 140 of the Act and dismissing the proceeding against insurance company.

2. In my view, an order of compensation in terms of section 140 of the Act is an "Award" within the meaning of section 173 thereof and as such this revisional application should be succeed in view of existence of an efficacious alternative remedy.

3. Mr. Roy, the learned advocate appearing on behalf of the petitioners has vehemently contended that an order passed in terms of section 140 of the Act is not an "Award" within the meaning of Chapter Xii of the Act and as such the same is not appealable. In support of such contention Mr. Roy has relied upon the following decisions :--

(a) Gaya Prasad and Ors. v. Suresh Kumar and Ors. reported in 1992 (2) AJR 588 (M.P.),

(b) State of Assam v. Pranesh Debnath and Others reported in 1994 (2) AJR 171 (Gau),

(c) Amita Baghi v. Tejwinder Singh and Another reported in 1996(1) AJR 161 (P.M.).

4. As regards the case of Gaya Prasad and Ors. (supra), although the same is a decision of a Full Bench consisting of three Judges of the Madhya Pradesh High Court, a subsequent Full Bench of five Judges of the same court in the case of Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others, has expressly overruled the said decision and has taken a contrary view. Therefore the said decision in the case of Gayaram and Ors. (supra) is of no help to Mr. Roy's client.

5. In the case of State of Assam v. Pranesh Debnath and Ors, a learned Judge of the Gauhati High Court has taken the view that the intention of the legislature is to confer right of appeal against an adjudication under Chapter XII of the Act; but section 140 being placed in Chapter X thereof and the nature of the proceeding being summary in nature, it was never the intention of the Act to confer right of appeal against an order u/s 140 of the Act

6. The Punjab and Haryana High Court has in the case of Amita Baghi and Another (supra) taken the view of the Gauhati High Court as above and has concluded that an order u/s 140 of the Act is neither an "Award" nor an "interim Award" and thus is not appealable u/s 173.

7. In order to appreciate the question involved herein, it will be appropriate to refer to the scheme of the Act.

8. Chapter X of the Act consists of five sections viz. sections 140 to 144.

9. Section 140 provides for liability to pay compensation in certain cases on the principle of no fault and limits the amount of compensation in such cases as specified therein. Section 141, on the other hand, makes a provision to claim compensation for death or permanent disablement besides the claim for compensation for no fault liability. Section 142 seeks to classify injuries which are considered as permanent disablement for the purpose of the Act. Section 143 lays down that the provisions of this chapter shall also apply in relation to any claim under Workmen's Compensation Act. Finally, section 144 declares overriding effect of chapter X over any other provisions of the Act or any other law for the time being in force.

10. Chapter Xii on the other hand consists of twelve sections viz. sections 165 to 176.

11. Section 165 empowers the State Government to constitute claim Tribunals to adjudicate upon the claims for compensation arising out of motor vehicle

accidents, resulting in death or bodily injury to persons or damages to any property of third parties.

12. Section 166 provides for the form of application for compensation, the persons who claim compensation, the time within which the application should be filed etc. It also authorises the claim Tribunals, to treat in appropriate cases, the accident report filed by the Police Officer as per section 158 as an application under the Act.

13. Section 167 lays down that when the claim arises both under this Act and under the Workmen's Compensation Act, the person entitled to compensation may claim only under either of these Acts and not under both the Acts.

14. Section 168 casts a duty upon the claim Tribunal to pass award on the application u/s 166 after holding enquiry and after giving the parties including the insurer an opportunity of being heard. Such award, according to the section, shall specify the person or persons to whom compensation shall be paid, the total amount of compensation and the amount which shall be paid by the insurer, or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

15. The proviso to the section 168 says that if the claim is made u/s 140 in respect of death or permanent disablement, such claim and any other claim (whether made in such application or otherwise) shall be disposed of in accordance with the provisions of Chapter X.

Section 169 lays down the procedure to be followed by claim Tribunal in setting claims for compensation and the powers of the claims Tribunals.

16. Section 170 gives power to the Claim Tribunal to implead the insurer a party in case of collusive or uncontested claim enabling the insurer to contest the claim on all or any of the grounds available to the person against whom claim is made.

17. Section 171 empowers the tribunal to award interest at such rate as it thinks fit on the award.

18. Section 172 seeks to authorise the tribunal to award special compensation in case of mis-representation or vexatious claims or defence.

19. Section 173 provides for the provision of appeal against, the award of the Tribunal subject to certain conditions.

20. Section 174 lays down that any money due from any person under an award by claim Tribunal may be recovered by the Collector as arrears of land revenue.

21. Section 175 bars jurisdiction of the civil court where any claim Tribunal has been constituted.

22. Section 176 confers upon the State Government power to make rules for carrying in to effect the provisions of section 165 to 174.

23. On consideration of the aforesaid sections incorporated in Chapter X and XII of the Act, it is clear that sections 140 and 141 of the Act give substantive right to the claimants to get compensation under the Act in "no fault" cases and other than "no fault" cases respectively. Section 140 however limits the same to particular amount as specified therein in a "no fault cases". But Chapter XII of the Act prescribe the procedure for enforcing such rights. Therefore even the rights conferred u/s 140 is to be enforced in accordance with the provision contained in Chapter XII by filing an application in terms of section 166 in the same manner a claim u/s 141 is recovered. The Tribunal in both the cases will adjudicate the claim in the same way with only the difference that in "no fault" cases it will award compensation at an amount fixed in section 140 and it is not required to decide whether the victim had any fault. Otherwise the Tribunal will have to come to a conclusion whether the claimants come within any of the Clauses mentioned in section 166(1) of the Act or whether the victim has really died of the accident or has become permanently disabled due to the accident as the case may be. The result of such adjudication is certainly an award u/s 168 and as such is appealable u/s 173.

24. The proviso to section 168 merely reminds the Tribunal that in case of a claim u/s 140, it will not insist on pleading or proof of wrongful act, neglect or default of the owners or drivers of the vehicle, it will award the fixed sum as mentioned in section 140(2) in the event the application succeeds and the claim will not be defeated or reduced by reason of any wrongful act, neglect or default of the victim.

25. Therefore, with regret, I express my inability to follow the decisions in the cases of Gaya Prasad and Ors, State of Assam v. Pranesh and Amita Bagchi v. Tejwinder Singh cited by Mr. Roy and hold that the order impugned herein is an award under Chapter XII of the Act.

26. Mr. Roy lastly contended that mere existence of an alternative remedy by way of appeal is not an absolute bar to entertain an application under Article 227 of the Constitution of India and as such notwithstanding such alternative remedy I should enter into the merit.

27. It appears from the record that the award was passed on March 16, 1993 and the instant application was moved on September 14, 1993 although affidavit was affirmed on August 20, 1993. It further appears from the record that even after excluding the time taken for obtaining the certified copy of the award, the application was affirmed beyond the period of limitation provided for an appeal u/s 173 of the Act. Therefore, although Mr. Roy has rightly submitted that existence of an alternative remedy is not absolute bar in entertaining an application under Article 227 of the Constitution of India, I am not inclined to exercise such power in view of the fact that at the time of presentation of this application the alternative remedy was barred by limitation. Moreover, an appeal u/s 173 of the Act is required to be heard by a Division Bench according to the Appellate Side Rules.

For all the aforesaid reasons, I am not inclined to go into the merit.

Thus, the revisional application is dismissed.

Let the certified copy of the order impugned be returned to the learned advocate for the petitioner on a production of a xerox copy thereof.

No costs.

28. Application dismissed.