
(2009) 03 BOM CK 0013
In the Bombay High Court
Case No : L.P.A. No. 18 of 2002

Subhash

APPELLANT

Vs

Kiran and Others

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227, 32, 323A, 323B
Motor Vehicles Act, 1988 — Section 149(2), 173(2)

Citation : (2011) ACJ 1771

Hon'ble Judges : Naresh H. Patil, J;N.D. Deshpande, J

Bench : Division Bench

Advocate : R.R. Mantri, for the Appellant; Y.P. Pawar, V.N. Upadhye and Mr. D.V. Soman, for the Respondent

Final Decision : Dismissed

Judgement

Naresh H. Patil, J.—Heard.

2. This Letters Patent Appeal arises out of order dated 10.9.2001, passed by learned single Judge of this court. Appellant is owner of a vehicle which was involved in an accident. Several claim petitions were filed and by a common judgment and order dated 11.1.1999, learned Member of the Motor Accidents Claims Tribunal, Aurangabad disposed of the claim petitions bearing Nos. 282, 305 and 309 of 1993.

3. The vehicle owned by the appellant was a taxi and the same was permitted to run as taxi vehicle. In the said accident, a truck bearing No. MWP 1885 gave dash to the taxi. The vehicle was insured with United India Insurance Co. Ltd., respondent No. 6, which included risk of life and bodily injury to the passengers. The insurance policy was valid up to 11.1.1994. The appellant had employed a driver having a licence to ply the taxi as per the permit.

4. Against the said decision, the appellant preferred two appeals bearing First

Appeal Nos. 177 and 178 of 2000 along with Writ Petition No. 4706 of 1999. By a common judgment and order, the learned single Judge decided the first appeals on 9.7.2001. Learned single Judge held that the owner of the vehicle and the insurance company, respondent No. 6, were jointly and severally liable to pay compensation to the claimants.

5. The claim petitions were preferred before Motor Accidents Claims Tribunal wherein the Tribunal awarded Rs. 7,500 towards compensation. In view of the provisions of section 173 (2) of the Motor Vehicles Act, 1988, no appeal was provided against the award as the compensation awarded by the Claims Tribunal was less than Rs. 10,000 and, therefore, writ petition came to be filed.

6. The respondents raised issue of maintainability of the writ petition which was upheld by learned single Judge and the writ petition accordingly came to be dismissed.

7. Learned counsel for appellant, Mr. R.R. Mantri, submitted that in view of the ratio laid down in the case of L. Chandra Kumar Vs. Union of India and others, , the right to approach the High Court under Articles 226 and 227 of the Constitution is preserved, hence the learned single Judge ought not to have dismissed writ petition on the ground of maintainability. The learned single Judge was convinced that the judgment and order passed by the Tribunal fastening the responsibility on the owner of the vehicle alone was wrong and, therefore, appeals came to be allowed and the owner of the vehicle and the insurance company, respondent No. 6, were jointly and severally liable to pay the amount of compensation. In this view of the matter, filing of writ petition was the only remedy and the High Court was empowered to entertain the writ petition at least under Article 227 of the Constitution of India, according to the counsel.

8. Mr. D.V. Soman, the learned counsel appearing for United India Insurance Co. Ltd., respondent No. 6, placed reliance on the judgments in the case of Mohd. Riyazur Rehman Siddiqui Vs. Deputy Director of Health Services, ; in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, ; and in the case of National Insurance Co. Ltd. and etc. Vs. Shrikanl Vinod Tiwari and Others, and submitted that there is no error in the view adopted by the learned single Judge and, therefore, Letters Patent Appeal itself is not maintainable. In the submission of the learned counsel, in view of the provisions of section 173 (2) of the Motor Vehicles Act, 1988 and the scheme of legislation, no further remedy in the shape of further appeals in matters wherein compensation awarded was less than Rs. 10,000 was available. In view of this, writ petition filed under Articles 226 and 227 of the Constitution of India itself was not maintainable.

9. We have considered the submissions advanced by learned counsel appearing for the parties. Learned single Judge by referring to the judgments and orders in the case of Harishankar Ramaswarup Jaiswal v. Commissioner of Prohibition and Excise, Bombay, 1997 (1) Mh LJ 460 ; Oriental Insurance Co. Ltd. Vs. Motor

Accidents Claims Tribunal, Thalassery and Others, ; National Insurance Co. Ltd. Vs. Vipul and Others, ; New India Assurance Company Limited, Mangalore Vs. The Member, Motor Accident Claims Tribunal, Udupi and others, ; and Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , held that the writ petition was not maintainable.

10. Mr. Soman, learned counsel, has placed reliance on judgment in the case of National Insurance Co. Ltd. and etc. Vs. Shrikanl Vinod Tiwari and Others, . In the said case, the cases of L. Chandra Kumar Vs. Union of India and others, and Sadhana Lodh Vs. National Insurance Company Ltd. and Another, , were also cited. It was held by Madhya Pradesh High Court in para 19 as under:

(19) Thus, as discussed above, Claims Tribunal is a civil court and if an appeal is expressly barred under the provisions, then legality and propriety of order can be examined in exercise of jurisdiction u/s 115, Civil Procedure Code. The question of law is accordingly answered as under:

"In the case where remedy of appeal is not available u/s 173 (2) of the Motor Vehicles Act, 1988, aggrieved party has a remedy of revision u/s 115 of Civil Procedure Code".

11. Learned counsel further placed reliance on a judgment of the Supreme Court in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, . Para 6 of the said judgment reads:

(6) The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by Claims Tribunal. Section 149 (2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided u/s 149 (2) of the Act. [See National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court u/s 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision u/s 115, Code of Civil Procedure, in such a situation a writ petition under Article 227 would lie and

not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court u/s 115, Code of Civil Procedure, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract the jurisdiction of High Court under Article 226 of the Constitution.

12. Provisions of section 173 (2) of the Motor Vehicles Act read:

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

Considering the scheme of the Act and the provisions of section 173 (2) of the Motor Vehicles Act, 1988, the view as already taken, which according to us does not call for any interference in view of number of judgments cited supra. We, therefore, find that the view adopted by learned single Judge was in conformity with the scheme of legislation and the provisions of section 173 (2) of the Motor Vehicles Act, 1988.

13. In the case of L. Chandra Kumar Vs. Union of India and others, , it was held that clause 2 (d) of Article 323-A and clause 3 (d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Apex Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. In view of the judgments cited supra, we are of the view that appellant is not rendered without remedy.

14. It was further submitted by Mr. Soman, learned counsel for insurance company, respondent No. 6, that writ petition could only be filed under Article 227 of the Constitution of India and as the learned single Judge has considered writ petition under Article 227 of the Constitution of India, Letters Patent Appeal itself is not maintainable.

15. For the reasons stated above, we are of the opinion that there is no merit in the Letters Patent Appeal and is accordingly dismissed.

16. Dismissal of this Letters Patent Appeal would not preclude the appellant from resorting to any other appropriate remedy as permissible in law.