(2006) 02 GAU CK 0024

In the Gauhati High Court

United India Insurance Co. Ltd. APPELLANT

Vs

Mrinalini Talukdar and Others RESPONDENT

Date of Decision : 09-02-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 171

Citation : (2007) 1 ACC 557 : (2008) ACJ 131

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Judgement

B.P. Katakey, J.—The Insurance Company by this application under Article 227 of the Constitution of India has challenged the award dated 24th December, 1999, passed by the learned Member, Motor Accident Claims Tribunal, Kamrup, Guwahati, in M.A.C.T. Case No. 747(k) of 1995 awarding a sum of Rs. 6,65,032 with interest with effect from the date of filing of the claim petition.

2. I have heard Mr. Section Dutta, learned Counsel for the petitioner and Mr. H. Deka, learned Senior Counsel appearing on behalf of the respondents.

3. Mr. Dutta, learned Counsel for the petitioner has submitted that as the Income Tax assessment order, pertaining to the financial year 94-95 was exhibited as Ext. 4 before the Motor Accident Claims Tribunal, the monthly income of the deceased has to be ascertained on the basis of the said assessment order and the same being around seven thousand, the learned Tribunal has committed illegality in awarding compensation by taking monthly income of the deceased as ten thousand, therefore, it is a fit case where this Court may exercise its power under Article 227 of the Constitution of India and set aside the judgment and order passed by the learned Tribunal. The further submission of the learned Counsel is that the rate of interest awarded by the learned Tribunal is on the higher side as the same was fixed at 12% per annum, which ought to have been between 6 to 8 per cent per annum. The learned Counsel for the petitioner has submitted that the award passed by the learned Tribunal has been challenged by

the Insurance Company by filing application under Article 227 of the Constitution of India on these two grounds only.

4. Mr. Deka, learned Senior Counsel appearing on behalf of the respondents on the other hand supporting the judgment and award passed by the learned Tribunal has contended that the power under Article 227 of the Constitution of India can be exercised by the High Court to keep the lower Courts and Tribunal, within the bounds of law and such power can be exercised only in very exceptional cases, where there is miscarriage of justice. The further submission of the learned Senior Counsel is that such power under Article 227 of the Constitution of India is not exercisable for correction of factual error or to record a finding different from the finding recorded by the Tribunal on facts. Countering the argument put forward by the learned Counsel for the petitioner regarding the income of deceased, the learned Senior Counsel has submitted that the Insurance Company for the purpose of contending that the deceased have the income of about seven thousand is relying on Ext. 4, which is the Income Tax assessment order relating to financial year 1994-95 and the date of accident being 26th August, 1995, the said assessment order for the previous financial year cannot be the sole basis for ascertaining the monthly income of the deceased. Mr. Deka, learned Senior Counsel has further contended that there is clear evidence on record that the monthly income of the deceased was ten thousand, as the PW 2, the widow of the deceased has made categorical statement that the deceased''s monthly income was 10 thousand. The Insurance Company by way of cross-examination of the said witness has not in fact challenged the said statement except by exhibiting Ext. 4 during cross-examination. Mr. Deka, learned Senior Counsel, therefore, submits that there is absolutely no ground in the present application under Article 227 of the Constitution of India, which deserves to be dismissed.

5. I have considered the submissions of the learned Counsel for the parties and also perused the pleadings as well as records of M.A.C.T. Case No. 747 of 95.

6. It is a settled position of law that the jurisdiction vested under Article 227 of the Constitution of India is purely a supervisory jurisdiction exercised to ensure that the Courts below functions in accordance with law. Such power is to be exercised (in) far and rare case and sparingly. The High Court in exercise of the power under Article 227 of the Constitution of India cannot reappreciate evidence on record and came to a different finding of fact than the finding of fact recorded by the learned Tribunal.

7. In the instant case, the Insurance Company has sought to invoke jurisdiction of Article 227 of the Constitution of India calling upon this Court to record a finding of fact about the monthly income of the deceased on the ground that according to the Income Tax assessment order pertaining to financial year 1994-95, the deceased''s monthly income was around seven thousand and, therefore, the statement of the PW 2, widow of the deceased for the monthly income of Rs. 10,000 is not believable. As held above, power under Article 227 of

the Constitution of India cannot be exercised by the High Court to re-appreciate the evidence on record and to alter the finding of fact recorded by the learned Tribunal. Even otherwise also PW 2 the widow of the deceased has made categorical statement that her husband''s monthly income was ten thousand which has not been challenged by the Insurance Company except by exhibiting Ext. 4, assessment order pertaining to financial year 1994-95. Admittedly the accident occurred on 26th August, 1995, therefore, the assessment order pertaining to the said financial year i.e. 1994-95 cannot be sole basis for recording the finding about the monthly income of the deceased. The learned Tribunal has rightly recorded the finding that the monthly income of the deceased was ten thousand, in the absence of any evidence to the contrary and in the absence of any cross-examination challenging the said statement by the Insurance Company.

8. The second ground on which the Insurance Company challenges the award by filing an application under Article 227 of Constitution of India is relating to the rate of interest awarded by the learned Tribunal. Section 171 of the Motor Vehicles Act, 1988 empowers the Tribunal to award simple interest at such rate and from such date not earlier than the making of the application for claim. The discretion is vested on the learned Tribunal to award such interest, which discretion has been exercised by the learned Tribunal awarding interest at the rate of 12%. Except making a statement that the rate of interest was too excessive nothing could be placed on record by the Insurance Company, how the same is excessive and if so, by how much?

9. In view of the above, I do not find any merit in the present writ petition and hence the same is dismissed. No cost.

