

(1995) 02 GAU CK 0010

In the Gauhati High Court

Case No : Civil Revision Nos. 56 and 57 of 1994

United India Insurance Co.Ltd

APPELLANT

Vs

Dilip Chakraborty; Swapan Bhattacharjee

RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

Civil Procedure Code, 1908 — Section 115
Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 140, 140

Citation : (1995) 2 GLJ 107

Hon'ble Judges : N.G.Das, J

Bench : Single Bench

Advocate : S.Adhikari, P.Roy Barman, M.Kar Bhowmik, M.K.Sen Gupta, K.K.Deb, A.Gon Choudhary, Advocates appearing for Parties

Judgement

1. Both these revision petitions filed under section 115 of CPC read with Article 227 of the Constitution of India arise out of a motor accident which had taken place on 30.4.1993 causing grievous injuries on the person of Shri Dilip Chakraborty, respondent No. I in Civil Revision No.56 of 1994 and death of Khokan Bhattacharjee in Civil Revision No.57 of 1994. Since both theses petitions related to the same accident I propose to dispose of both these petitions by this common order.

2.1 have heard Mr. A.Gon Choudhury, the learned counsel appearing on behalf of the petitioner and Mr. M.Kar Bhowmik and Mr. BN Majumdar, the learned counsel appearing on behalf of the respondents.

3. The facts leading to these revision petitions lie in a narrow compass and may be stated as under. On 30.4.93 around 11.30 AM a motor accident took place at a place called Pratapgarh as a result of which one person namely, Kokhan Bhattacharjee died instantaneously and aforesaid respondent No. I, namely, Dilip Chakraborty sustained severe injuries on his person. The legal representatives of deceased Khokan Bhattacharjee as well as injured person, namely, Dilip

Chakraborty filed application before the Motor Accident Claims Tribunal, West Tripura for compensation under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act). Along with those petitions the claimants also filed applications under section 140 of the Act for the interim relief. Learned Member of the Motor Accident Claims Tribunal disposed of the petitions by two separate orders passed on 22.8.1994 granting the claim of compensation and directed that the petitioner namely, United India Insurance Co. Ltd. to pay the awarded sum.

4. Aggrieved, the petitioners filed this revision petitions under the provisions mentioned above.

5. Mr. Gon Choudhury, the learned counsel appearing on behalf of the petitioner challenged the order of the learned Member of the Motor Accident Claims Tribunal on two grounds, namely, that on the date of accident the vehicle, namely, TRL 3590 (Truck) which was involved in the accident had no insurance policy and (2) the driver who was driving the vehicle at the time of accident had no valid licence. But in course of his argument, Mr. Gon Choudhury did not press for the first point. He however urged before this Court that the driver who was driving the vehicle at the time of accident had no valid licence and in support of this contention the petitioner submitted some relevant documents before the learned Member of the Motor Accident Claims Tribunal. But learned Member, Motor Accident Claims Tribunal ignored those documents and erroneously made the finding against the petitioner requiring it to pay the interim award.

6. Mr. Kar Bhowmik, the learned counsel appearing on behalf of the respondents has on the other hand contended that no application under section 115 of CPC is maintainable against an award which was passed by a Member, Motor Accident Claims Tribunal under the provision of section 140 of the Act by reason of the fact that the Tribunal is not a civil Court as we ordinarily mean. In support of his contention Mr. Kar Bhowmik has placed reliance upon a decision rendered by the Apex Court in the case of Associate Cement Companies Ltd. vs. PN Sharma, AIR 1965 SC 1595. In the decision referred to above their Lordships made a distinction between a Court and a Tribunal and observed :

? The expression "Court" in the context denotes a Tribunal constituted by the State as a part of the ordinary hierarchy of Courts which are invested with the State's inherent judicial power. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary Courts which have been constituted under its relevant provisions. The Constitution recognised a hierarchy of Courts and to their adjudication are normally entrusted all disputes between the citizens and the State these Courts can be described as ordinary Courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which is described as

judicial process. The powers which these Courts exercise, are judicial functions and the decisions they reach and pronounce are judicial decision.

Regarding "Tribunal" it was observed : Special matter and questions are entrusted to them for their decision and in that sense, they share with the Courts one common characteristic; both the Courts and the Tribunal are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions, (vide *Durga Shankar Mehta vs. Raghuraj Singh*, AIR 1954 SC 520 at 522). They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the Courts is regularly prescribed and in discharging their functions and exercising their powers, the Courts have to conform to that procedure. The procedure which the Tribunal have to follow may not always be so strictly prescribed, but the approach adopted by both the Courts and the Tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of Courts, so in the case of Tribunals, it is the State's inherent judicial power which has been transferred and by virtue of said power, it is the States inherent judicial function which they discharge. Judicial functions and judicial power are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to Tribunal by entrusting to them the task of adjudicating upon special matter and disputes between parties.....

The civil Court does not possess the power to devise its own procedure. It is obliged to follow the provisions of the Code of Civil Procedure in the trial of the suits in letter and spirit. There is no such obligation on the Claims Tribunal. Subject to the rules framed it is entitled to follow such summary procedure as it may think fit. If the Claims Tribunal has been accepted or treated to be a "Court" by the Parliament then there was no need to enact section 110F of the Act barring the jurisdiction of the civil Courts to entertain any questions relating to any claim for compensation which may be adjudicated upon the Claims Tribunal or to issue injunction in respect of such claims. It was equally unnecessary in this context to provide by subsection (2) of section 110C of the Act that the Claims Tribunal shall be deemed to be a civil Court for the purpose of punishment for contempt and perjury. A Division Bench of the Kerala High Court in *Beeran vs. Rajappan*, 1980 ACJ 287 (Kerala), had an occasion to consider as to whether the Claims Tribunal was a Court and its orders were amenable to the revisional jurisdiction of the High Court under section 115 of the Code of Civil Procedure. After carefully examining the law on the point it was observed:

? With the growth of civilisation and the problem of modern life, a large number of Administrative Tribunal have come into existence. These Tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner

and even take evidence on oath, but they are not part of the ordinary Courts of civil judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to Court, but are not courts.....?

By "Courts" is meant Courts of civil judicature and by "Tribunals"; those bodies of men who are appointed to decide controversies arising under certain special laws.

Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stemp said that the real distinction is that Courts have an air of detechment.?

7. In this context it has also been urged by Mr. Kar Bhowmik that to interfere with an order passed by a Motor Accident Claims Tribunal in exercise of the powers under Article 227 of the Constitution of India is also very much limited and that such an order cannot be interfered with even if there is error of law. In support of his contention learned counsel for the respondents has placed reliance upon the decision of the Supreme Court rendered in the case of Mohd. Yunus vs. Mohd. Mustaqim & others reported in AIR 1984 SC 38. In this decision their Lordships under para 7 of the judgment observed :

? A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited ?to seeing that an inferior Court or Tribunal functions within the limits of its authority? and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act an appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct error of law in the decisions.?

8. It would be apparent from the observation of the Supreme Court quoted above that the proceeding before the Claims Tribunal closely resembled proceeding in civil Court but it has not been held that Claims Tribunal is a Court subordinate to the High Court.

9. In this context it has also been submitted by Mr.Kar Bhowmik that the provisions for payment of prompt and immediate compensation in respect of no fault liability under the provisions of section 140 of the Act is in the spirit of social welfare legislation and should always be interpreted beneficially in favour of the claimant and that technicalities of law should not be allowed to have any upper hand. In support of his contention Mr.Kar Bhowmik has placed reliance upon a decision in the case of Narendra Singh vs. Oriental Fire and General Insurance Co. Ltd., Delhi & others reported in AIR 1987 Rajasthan 77 and another decision of a Division Bench of this Court rendered in the case of Smti Samati Deb Barma & others vs. State of Tripura & others reported in (1985) 1

GLR 420.

10. I find much substance in the submission of Mr. Kar Bhowmik as a persual of the provisions of section 140 of the Act will also show that the award which is passed or being passed under section 92 A (section 140 of the present Act) is a peremptory award and technical question on fine question of law should not stand in the way of passing any award under section 140 of the Act. In the instant case the only contention that was canvassed at the bar by Mr. Gon Choudhury, the learned counsel appearing on behalf of the petitioner is that the driver who actually drove the vehicle at the time of accident had no valid licence. That may be a fact or may not be a fact. But there would be no bar for the Insurance Company to raise the objection at the time of final hearing for compensation under section 166 of the Act which empowers the Tribunal to pass an order directing the owner to ensure to pay the Insurance Company the amount which was paid to the claimants under section 140 of the Act. In my opinion the interim award made under section 140 of the Act would not have the effect of holding that the parent claim in case the Insurance Company is able to successfully prove it and absolve itself of its responsibilities to indemnify the owner of the vehicle.

11. For the foregoing reasons, I hold that the Claims Tribunal while deciding claim applications filed under the Act is not civil Court subordinate to the High Court for the purpose of section 115 of the Code of Civil Procedure and the orders passed by the Claims Tribunal are not amenable to the revisional jurisdiction of the High Court. The revision petitions are accordingly dismissed but under the circumstances there would be no order as to cost.