
(2007) 08 MP CK 0097
In the Madhya Pradesh High Court

Uttara Soni and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 27-08-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2009) ACJ 276

Hon'ble Judges : Sanjay Yadav, J;S.S. Jha, J

Bench : Division Bench

Judgement

Sanjay Yadav, JJ.—The appellants-claimants being aggrieved by order dated 16.4.2005 passed in M.J.C. No. 81 of 2004 by the Motor Accidents Claims Tribunal, Satna, has preferred the present appeal u/s 173 of the Motor Vehicles Act, 1988.

2. The sole question which arises for consideration in present appeal is whether it was within power of Claims Tribunal to review its order passed on 24.8.2004 on an application filed by respondent insurance company and reduce the amount of compensation awarded earlier in absence of an allegation of the insurance company that compensation was obtained by practising fraud?

3. The brief facts which have led to arising of aforesaid issue are that, one Pradeep Soni died of an accident which took place on 14.6.2003. The said deceased on the fatal day was going along with one Prashant Soni from Satna to village Singhpur on his motor cycle which was dashed at by a truck bearing registration No. MP 19-D 3813 near village Rerua resulting in death of Pradeep Soni. The truck was owned by respondent No. 2 and was driven in a rash and negligent manner by the respondent No. 1. The criminal case was registered vide Crime No. 304 of 2003 under Sections 279 and 304-A of Indian Penal Code and criminal case bearing No. 458 of 2003 is pending in the court of Judicial Magistrate First Class, Nagod. The appellant-claimant No. 1 is the widow and appellant-claimant Nos. 2 and 3 are the children of deceased Pradeep Soni and

the appellant-claimant Nos. 4 and 5 are the parents of the said deceased. The Claims Tribunal vide award dated 24.8.2004 granted the compensation to the tune of Rs. 3,13,000 along with interest of 7 per cent from 5.8.2003 in favour of the appellants-claimants. However, subsequently on an application for review filed by the insurance company, the amount has been reduced to Rs. 2,21,000. It is this order passed on review application which is a cause of grievance to the appellants-claimants.

4. It is submitted by learned Counsel for the appellants that the Claims Tribunal did not have inherent jurisdiction to review its earlier order. It is contended that after the passing of the award dated 24.8.2004 the Claims Tribunal became functus officio and any order passed on an application for review is a nullity in the eyes of law. It is accordingly submitted that the Claims Tribunal committed illegality in entertaining and allowing a review application filed by insurance company. It is also contended by the counsel for the appellants-claimants that there being no allegation of fraud in the said application for review the Claims Tribunal ought not have entertained the same. The counsel for the appellants has relied upon the following judgments to substantiate his submissions, Nain Singh Vs. Koonwarjee and Others, , ; Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, ; United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, and United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, .

5. The learned Counsel appearing for respondent Oriental Insurance Co. Ltd. on his turn has supported the order passed by the Claims Tribunal. In support of his submissions, learned Counsel for the respondent has placed reliance on the Full Bench judgment rendered by Gauhati High Court in the case of Smt. Milan Rani Saha Vs. New India Assurance Company Ltd., Agartala and Others, and the judgment of this Court rendered in National Insurance Company Ltd., Jabalpur Vs. Lachhibai Urf Laxmibai and Others, and Narayan Lillahare v. Dinesh 2007 (2) MPHT 32.

6. Heard the counsel for the parties at length.

7. It is by now well settled that fraud vitiates the entire proceedings and in such a case it is open to an insurer to apply to the Tribunal for rectification of award.

8. In the case of United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, , the Supreme Court after relying upon its earlier judgment rendered in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Indian Bank v. Satyam Fibres (India) Pvt. Ltd. 1996 CCJ 1272 (SC), held in para 15 as under:

(15) Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of a high degree, cannot be foreclosed in such a situation. No court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect

the very basis of the claim.

9. It was again held by the Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, as under:

(31) We have already held that unless the conditions precedent specified in Section 170 of 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek the permission of the Tribunal to contest the claim on the grounds available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case, where an application for permission has been erroneously rejected the insurer can challenge only that part of the order while filing an appeal on grounds specified in Sub-section (2) of Section 149 of the 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer *res Integra* that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

(Emphasis added)

10. The Division Bench of this Court in the case of United India Insurance Co. Ltd. Vs. Ramdas Patil and Others, , held in para 23 as under:

(23) Whether the insurer can prefer an appeal on discovery of fraud or collusion between the claimants and the insured after passing of the award?

On behalf of the insurance company it is urged that several false claim cases are instituted in the name of fictitious persons and sometime by impersonating the rightful claimants, awards are obtained from the Tribunal by leading false evidence. Despite best efforts sometimes the fraud and/or collusion between the claimant and owner and driver of the vehicle involved do not come to light in the course of proceedings before the Tribunal and are discovered only after passing of the award. In such cases, the insurance company should not be denied a right of appeal.

Thus, the exercise of inherent power of review by the Claims Tribunal is limited to the discovery of fraud in obtaining the compensation.

11. It is equally a settled law that the power of review is not inherent power. It must be conferred by law either specifically or by necessary implication. It was held by the Supreme Court in the case of Nain Singh Vs. Koonwarjee and Others, as under:

(4) The High Court has misconceived the scope of its inherent powers. Under the inherent power of courts recognised by Section 151, CPC a court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the court must be exercised subject to the rule that if the Code does contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked.

12. Similarly, in the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , the Apex Court held as under:

(4) It is well settled that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

13. We are not oblivious of the judgment rendered by the Division Bench of this Court in the case of Narayan Lillahare v. Dinesh 2007 (2) MPHT 32, wherein one of us Jha, J. was a party. In para 16 it has been held as under:

(16) In view of the aforesaid pronouncement of law there can be no trace of doubt that the Tribunal has the power to review. If the provision contained under Order 47, Rule 1, CPC is read in proper perspective there can be no shadow of doubt that the subsequent events can be taken note of on certain conditions precedent being satisfied. In the case at hand, the subsequent event is amputation, as set forth in the claim petition. The said amputation may have nexus with the accident occurred on 28.4.2003. The same might have happened due to some other reason. As presently advised, we do not intend to dwell upon the same at present but the said facet can be factor for recall or modification or review of the award as the concept of "for any other sufficient reason" would get attracted. The same has to be dealt with by the Tribunal within the parameters of review.

14. The facts in the case of Narayan Lillahare 2007 (2) MPHT 32, warranted the aforesaid verdict and we are in respectful agreement to the same. However, in the instant case it is the insurance company which has preferred an application for review of the order passed by the Claims Tribunal without there being any allegation of fraud. We are afraid that in absence of an allegation regarding compensation being obtained by practising fraud, the insurance company could have invoked the inherent jurisdiction of the Claims Tribunal. We are, therefore, of considered opinion that the Claims Tribunal exceeded its jurisdiction while entertaining the review application filed by the insurance company against the quantum of compensation which was awarded by the Claims Tribunal. Right of insurance company to challenge award on quantum of compensation is not permissible unless leave to contest on all grounds is sought by the insurer u/s 170 of Motor Vehicles Act. If insurer has no right to question quantum of compensation determined then it has no right to seek review of the order for reduction of compensation. It may be mentioned that award was by Mr. S.C. Sinho (as he then was) and has been reviewed by Mr. Vikas Jain who was posted later and without referring to any grounds available under Order 47, Rule 1, CPC award has been reviewed particularly when Order 47 has no application to

proceedings under the Act and Rule 240 of the Madhya Pradesh Motor Vehicles Rules, 1994. As held in the judgments referred above review is permissible if some fraud is played or some other special ground is made out in inherent jurisdiction when order passed is palpably wrong or passed under some misapprehension. But review on the ground of error in the judgment or on merit is not permissible.

15. For the aforesaid reasons, we are of the considered opinion that exercise of inherent power by the Claims Tribunal in absence of the allegation of fraud is bad and deserve to be set aside.

16. Accordingly, we set aside the order dated 16.4.2005, passed by the Claims Tribunal in M.J.C. No. 81 of 2004 and restore the award dated 24.8.2004. No order as to costs.