The Oriental Insurance Company Limited Vs Kulbir Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 25, 2003

Acts Referred: Evidence Act, 1872 â€" Section 44
Motor Vehicles Act, 1988 â€" Section 166, 170

Citation: (2004) 2 ACC 767 : (2004) ACJ 838 : (2003) 135 PLR 650 : (2003) 4 RCR(Civil) 711 : (2004) 1 RCR(Civil) 263

Hon'ble Judges: Adarsh Kumar Goel, J

Bench: Single Bench

Advocate: Amit Rawal, for the Appellant;

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.
These four revision petitions have been preferred by the petitioner-Insurance company against the award of the

Motor Accident Claims Tribunal. The award was rendered in four claim petitions arising out of the same accident. Case of the claimants is that the

accident in question took place on 25.10.1998 when the petitioner Kulbir Singh (Claimant in MACT Case No. 62 of 1999) along with his wife,

Paramjit Kaur (Claimant in MACT Case No. 65 of 1999) with his minor sons, Ramandeep Singh and Davinder Deep Singh (Claimants in MACT

Case No. 65 of 1999) and friends, Balbir Kumar (Claimant in MACT Case No. 63 of 1999) and Vijay Kumar were going in Maruti Car No.

PID-7365 when they were hit by Truck No. HR-38-BG-5548 being driven rashly and negligently by Jaswant Singh, driver, resulting in injuries to

the claimants. Kulbir Singh received injuries on hip joint, right thigh, ribs, forehead and right knee, Balbir Kumar received injuries including

breaking two teeth, deep cuts on the nose, fracture of nose bone and disfigurement of face, Ramandeep received injuries on his left eye and cuts

on the head above the forehead, Paramjit Kaur received fracture of nose bone, deep cut on the right eyebrow, cut on lips, injuries in jaws and

knees. They were carried to Sacred Heart Hospital at Jalandhar and received treatment at the Hospital.

1.1. The claims were contested.

1.2. After appreciating evidence on record, the Tribunal awarded following amounts;-

(i) Rs. 2,03,684/-

(ii) Rs. 15980/-

(iii) Rs. 15766/-

(iv) Rs. 17480/-

with interest at the rate of 9% per annum from the date of filing of the petitions till realisation.

2. Learned counsel for the petitioner-Insurance company submitted that though appeal was not maintainable, a revision could be preferred. He

also submitted that even cases where the Insurer had no right to contest, u/s 170 of the Motor Vehicles Act, 1988 (hereinafter referred to as the

Act) and right to contest was confined to grounds mentioned in Section 149(2), the plea of fraud could be taken. Learned Counsel for the

petitioner referred to Full Bench judgment of the Gauhati High Court in Milan Rani Saha (Smt.) v. New India Assurance Company Ltd. (2001)1

A.C.J. 103 (F.B,), wherein it was held that constitution of power of the High Court under Article 227 was not taken away. Reference was made

to the judgment of the Apex Court in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, . Reference was also made to a Division

Bench judgment of this Court in National Insurance Co. Ltd. and Another Vs. Smt. Balbir Kaur and Others, , wherein it was observed that if an

award is highly excessive, unconscionable or causing gave injustice to the Insurance Company, this court could be approached under Article 227.

He has relied on decision of the Apex Court in National Insurance Co. Ltd., Chandigarh v. Nicolletta Rohtagi and Ors. (2002)132 P.L.R. 621

wherein it was observed as under;-

.. So far as obtaining compensation by fraud by the claimant is concerned, vitiates the entire proceeding and in such cases it is open to an insurer

to apply to the Tribunal for rectification of award.

3. Learned counsel for the petitioner submitted that in the present case, fraud comprised of production of bills Exhibits AA-1 to AA-36 which bills

were exhibited subject to objection. He submitted that exhibition of the said documents did not mean that the said documents were proved. He

also submitted that the shop from which the bills were issued did not exist. He referred to evidence of RW-1 Pardip Kumar, District Drugs

Inspector to the effect that no drug license had been issued to Dashmesh Medical Hall, Kahlon Medical Hall and Sharma Medical Agency who

had issued the bills. Learned counsel for the petitioner further submitted that the Tribunal ignored this objection by observing that a patient will not

know whether a chemist was having a valid licence or not and the bills could not be held to be forged or fabricated on that ground.

4. In National Insurance Company''s case (supra), it has been made clear that Insurance Company has no right to file appeal unless conditions

precedent specified in Section 170 of the Act are satisfied. Where there is collusion between the claimants and the insured or where insurer does

not contest the claim, the company can seek to contest the claim and where permission is refused, appeal has to be confined to the question

whether the Tribunal erroneously refused permission, The insurer has limited rights u/s 149(2) of the Act. Even where insurer does not file an

appeal, it is not permissible to file an appeal challenging the quantum of compensation or finding regarding negligence.

5. Having regard to the scheme of the special statute and the law laid down by the Apex Court in National Insurance Company''s case (supra),

Insurance Company cannot be allowed to challenge the award on grounds which are not available by way of appeal. Reference may also be made

to recent decision of the Apex Court in Sadhana Lodh v. National Insurance Company Ltd. and Anr. (2003)133 P.L.R. 763, wherein it was

observed that an* insurer cannot enlarge the grounds of challenge by filing a writ petition under Article 226/227 where statutory right of appeal is

restricted. No doubt, as held by the Apex Court in United India Insurance Company, Milan Rani and Balbir Kaur''s cases (supra), a revision may

be entertained where the award is unconscionable or fraudulent.

6. It is well settled that a judgment or decree obtained by fraud is nullity. Section 44 of the Evidence Act also supports this position. It must be

made clear that challenge on this ground is akin to challenge to a decree, which has become final on the ground of fraud or collusion. A party which

has been unsuccessful in a litigation cannot be allowed to reopen a final decree merely by alleging fraud on the ground that the finding of the Court

was erroneous or was rendered on perjured evidence.

7. Concept of fraud as a ground for vacating a judgment has been dealt with in a number of decisions.

8. In Patch v. Ward (1867)3 Ch. 203 Sir John Rolt, LJ observed, that the fraud must be actual positive fraud, a meditated and intentional

contrivance to keep the parties and the court in ignorance of the real facts of the case and obtaining that decree by that contrivce. In Bishen Singh

v. Wasawa Singh AIR 1926 Lah. 177, it has been said that in order to obtain a reversal of the judgment given in the former case, it is not sufficient

for the plaintiffs to prove constructive fraud, but they must prove actual positive fraud. In AIR 1941 93 (Privy Council) , it was held by the Privy

Council, that the party alleging fraud is bound to establish it by cogent evidence and suspicion cannot be accepted as proof. Lord Atkin in AIR

1941 93 (Privy Council) observed at Page 95 that fraud like any other charge of a criminal offence, whether made in civil or criminal proceeding,

must be established beyond reasonable doubt. Mere want of good faith cannot establish fraud.

Black, in his article on ""judgments"" in 23, Cyclopaedia of American Law and Procedure, enumerates the following acts of fraud which would

vacate the judgment, ""Misrepresentation or tricks practiced upon defendant, keeping him away from the trial preventing him from claiming his rights

in the premises or setting up an available defence, acting contrary to an agreement between the parties that the case should not be continued or that

defendant''s time to answer should be extended or that the action should be dismissed as the result of compromise or settlement, or that the case

would not be pressed to a judgment. Black, in his treatise on ""judgment"", volume 1, Section 321, observed thus:

There may well be cases of fraud in the cause of action, or in the manner of procuring the instrument in suit where the courts would not withhold

relief on motion; as where the complainant was kept in ignorance of the fraud until it was too late for him to plead it in defence and could not have

discovered it by due diligence or where he was fraudulently prevented from setting it up at the proper time.

(Discussion in above para is taken from Division Bench judgment of the Kerala High Court in Capital Bappu and Ors. v. Mugharikutty''s son

Kizhakke Valappil Muhammad and Anr., AIR 1993 Kerala 273 (Paras 25 and 21).

9. In Flowr v. Lloyd L.R.10 Ch. 327, James L.J. observed as follows;

Where is litigation to end, if a judgment obtained in action fought out adversely between two litigants sui juris and at arm''s length could be set

aside by a fresh action on the ground that perjury had been committed in the first action or that false answers had been given to interrogatories, or

a misleading production of documents, or of a machine, or of a process had been given? There are hundreds of actions tried every year in which

the evidence irreconcilably is conflicting, and must be on one side or other wailfully and corruptly perjured. In this case, if the plaintiffs had

sustained on this appeal the judgment in their favour, the present defendants in their turn, might bring a fresh action to set aside that judgment on the

ground of perjury of the principal witness and subordination of perjury and so the parties might go on alternately ad infinitum...Perjuries,

falsehoods, frauds, when detected must be punished and punished severely, but in their desire to prevent parties litigants from obtaining any benefit

from such foul means. Court must not forget the evils which may arise from opening such new sources of litigation, amongst such evils not the least

being that it would be certain to multiply indefinitely the mass of those very perjuries falsehoods and frauds.

In Chinnayya v. Ramanna ILR (1915) Mad. 203, Benson and Sundara Ayyar, JJ., dealt elaborately with the nature of the fraud contemplated by

Section 44 of the Evidence Act and observed as follows;

It is undisputable that the decree may be vacated on the ground that it was obtained by the successful party by fraud. The question is what would

amount to fraud which would entitle an unsuccessful litigant to get the decree vacated. He cannot, it is clear, be allowed to get round the rule of res

judicata and to prove that the judgment given by the court was wrong, because it came to a wrong conclusion on the evidence before it. It follows

from this that the courts conclusions both on the constructions to be put on the evidence placed before it and on the inference to be drawn from

such evidence as well as on the trustworthiness of the evidence should be regarded as final. If the court acts erroneously in forming its judgment on

any of these matters, the proper remedy is to invoke the help of the appellate tribunal where an appeal is allowed by law. Another mode of

rectifying an erroneous judgment is to apply for review of judgment. The unsuccessful party has, in such an application, an opportunity to adduce

any evidence which he failed to adduce at the hearing and which he could not, with all proper diligence have then adduced. It cannot be doubted

that in such cases he cannot institute a fresh suit to get the judgment vacated. The test to be applied is, is the fraud complained of not something

that was included in what has already been adjudged by the Court, but extraneous to it? If, for instance, a party be prevented by his opponent

from conducting his case properly by tricks or misrepresentation that would amount to fraud.

In Kadirvelu v. Kuppuswami Naiker ILR (1918) Mad. 743, a Full Bench of the Madras High Court held that a suit would not lie to set aside a

judgment in a previous suit on the ground that it was obtained by perjured evidence. The learned Judges followed the decisions in Chinnayya v.

Ramanna ILR (1915) Mad. 203, Munshi Mosuful Hug v. Surendra Nath Ray 16 C.W.N. 1002 and Jankikuar v. Lachmi Narain ILR (1915) All.

535. It is true it is dangerous to allow any fresh suit to be brought by an unsuccessful litigant to set aside the decree passed against him on the

ground that his opponent had imposed on the Court by letting in perjured evidence. The passion for litigation wherever it exists in this country is

likely to turn into almost incurable mania and the parties might go on alternately ad infinitum. Perjuries, falsehoods, frauds, when detected, must be

punished and punished severely, but in their desire to prevent litigant parties from obtaining any benefit from such foul means the courts must not

forget the new sources of litigation amongst such evils which may arise from opening such evils not the least being that it would be certain to

multiply indefinitely the mass of those very perjuries, falsehoods and frauds.

In all such cases, the court has discretion. It is not a mental discretion to be exercised exgratia, but is a legal discretion to be exercised in

conformity to law. The section is remedial in its character and it is intended to furnish a simple speedy and efficient means of relief in a most worthy

class of cases. As observed in the Treatise on the Law of Judgments by A.C.Freeman, ""if the power of the Court were discretionary in the

ordinary sense of that term, the practice would necessarily be as varid as are the different temperaments of Judges; and even in proceedings before

the same Judge would as probably be shaped by the personal pleasures or annoyances of the several occasions in which he happened to act as by

those unvarying rules which, whenever, applied to identical circumstances, produce identical results"". The discretion of the courts has to be

exercised on sound and judicial principles.

(Discussion in above para in taken from a Single Bench judgment of the Andhra Pradesh High Court in Mangilal v. Mohmood Ahmed (1980)1

AWR 295.

10. In view of the above principles, plea of the learned counsel for the petitioner that the impugned award was vitiated by fraud on account of

taking into account bills issued by a chemist who was not ""licenced, cannot be accepted. Reliability or admissibility of evidence cannot per se be

held to be fraud vitiating an award. Even if the award is erroneous, the same cannot be equated to fraud. Thus, even if the revision petition is held

to be maintainable, the limited ground available in such a case on which a revision petition can be filed, is not made out in the present case.

11. For the above reasons, I do not find any merit in these revision petition and the same are dismissed.