New India Assurance Co. Ltd. Vs Charubala Das and Others

Court: Gauhati High Court

Date of Decision: Sept. 9, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 115, 151, 152
Motor Vehicles Act, 1988 â€" Section 149, 166, 170

Citation: (2006) 3 ACC 436 : (2007) ACJ 1146 : (2005) 4 GLT 674 : (2004) 4 GLT 674

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

I.A. Ansari, J.
This revision is directed against the order dated 29.4.2003, passed by learned Member, Motor Accidents Claims Tribunal,

Barpeta, in M.A.C. Case No. 173 of 1988.

2. The material facts and various stages leading to the present revision may, in brief, be set out as follows:

For the injuries sustained by one Brojen Das in a motor vehicle accident, which took place on 14.5.1998, an application u/s 166 of Motor

Vehicles Act, 1988, was made by the claimant-opposite party No. 1 seeking, inter alia, compensation of a sum Rs. 16,62,000 for the injuries

sustained by the said injured. This application gave rise to M.A.C. Case No. 173 of 1988 aforementioned. By its award dated 12.11.2002,

passed in M.A.C. Case No. 173 of 1988 aforementioned, the learned Tribunal granted Rs. 3,71,970.20 as compensation to the claimant and

directed the insurer of the vehicle involved in the said accident, namely, the present petitioner, to make payment of the said amount within a period

of sixty days from the date of passing of the award, failing which the awarded amount of compensation would carry interest at the rate of 9 per

cent per annum with effect from 9.6.1998, i.e., from the day of presentation of the claim petition.

3. In compliance with the above directions given by the award, the insurer petitioner herein made payment of the awarded amount. Subsequent

thereto, however, a petition was filed, u/s 152 of the Civil Procedure Code, by claimant stating therein, inter alia, that the judgment shows that the

voucher in respect of an amount of Rs. 1,20,000 incurred as expenses for treatment at Popular Nursing Home, Patna, has not been counted, due

to non-availability of the same in case record.

4. Upon a notice served on the insurer petitioner, the insurer had submitted their objection bringing it to the notice of the learned Tribunal that

Section 152 of the CPC can be resorted to, only for making clerical or arithmetical corrections and since no question as regards the clerical or

arithmetical error had been pointed out by the claimant, the said petition made u/s 152 of the CPC was not maintainable. By its order dated

10.4.2003, the learned Tribunal, however, disposed of the said petition made u/s 152, CPC by granting the relief, which the claimant had sought

for. While so granting the relief of an additional sum of Rs. 70,000, learned Tribunal observed and held as follows:

Having heard learned Counsel for both sides in the matter of the verified petition No. 2247 of 2002 dated 5.12.2002 preferred u/s 152, CPC by

learned Counsel for the claimant and on perusal of the materials inducted into evidence by the claimant side, it appears that voucher under Exh.

405 was left out in counting the total pecuniary loss sustained by the claimant. The said voucher under Exh. 405 shows an amount of Rs. 70,000,

which was incurred by the claimant for the treatment. Therefore, this amount would be added to the total amount of pecuniary loss. In that view of

the matter, the arithmetical mistake appears in the calculation is corrected and the petition is allowed on contest correct the judgment and the

decree accordingly, inserting the amount of Rs. 70,000 (rupees seventy thousand) to the total pecuniary loss.

It is the order dated 29.4.2003, aforementioned, which stands impugned in the present revision.

5. I have heard Mr. S. Dutta, learned Counsel for the petitioner and Mr. G.C. Phukan, learned Counsel for the opposite party.

6. Before proceeding further, it may be pointed out that an order passed u/s 152 of the CPC is admittedly, not an appealable order. When the

revision was first taken up for hearing, it was contended that the learned Tribunal is not a court within the meaning of Section 115 of the CPC and,

therefore, no revision lies against the impugned order. As there were conflicting decisions of this court on the question as to whether a Motor

Accidents Claims Tribunal is or is not a court subject to the revisional jurisdiction of High Court within the meaning of Section 115 of the Civil

Procedure Code, the matter was laid before a Division Bench. By judgment and order dated 15.6.2005, passed in the said revision along with

some others, Oriental Insurance Co. Ltd. Vs. Abeda Begum and Others, the Division Bench of this court has now held that Motor Accidents

Claims Tribunal is a court within the meaning of Section 115 of Civil Procedure Code. The revision has accordingly been laid before this court for

disposal of the same on merit.

7. Resisting the revision, it has been pointed out by Mr. G.C. Phukan, learned Counsel for the claimant-opposite party, that by the order impugned

in this revision, the learned Tribunal has, in fact, directed the petitioner as insurer, to make payment of an additional amount of Rs. 70,000 as

compensation and since an insurer is not allowed, unless permitted u/s 170 of the Motor Vehicles Act, to take defences beyond those which are

available to an insurer in terms of Sub-section (2) of the Section 149 of the Motor Vehicles Act, this revision is not maintainable, for, no permission

was granted u/s 170 of the Motor Vehicles Act, by the learned Tribunal to the insurer to contest the claim proceedings on all the grounds, which

were available to the owner. In short, Mr. Phukan''s contention is that in terms of the provisions of Section 149(2), an insurer cannot challenge the

quantum of compensation awarded to a claimant and, hence, the present revision is not maintainable, for this revision, in effect, challenges the

quantum of compensation.

8. While considering the above objection, it needs to be noted that when compensation is awarded by a Claims Tribunal, which has the jurisdiction

to award the compensation, the insurer cannot, as rightly contended by Mr. Phukan, challenge the quantum of compensation awarded to the

claimant unless the Tribunal had, in terms of Section 170, allowed the claimant to take such defences as were available to the owner of the vehicle

concerned. However, when a Tribunal awards compensation without having jurisdiction, the challenge to such an award can be posed by even an

insurer inasmuch as an award rendered without jurisdiction is void ab initio.

9. In the case at hand, therefore, if this court now finds that the learned Tribunal could not have exercised jurisdiction in the facts and circumstances

of the present case u/s 152 of the Civil Procedure Code, the impugned order dated 29.4.2003, can be interfered with, for this court, in the present

revision, while exercising the revisional powers would not be determining as to whether the quantum of compensation awarded to the claimant is or

is not reasonable, justified and valid. What this court will be really determining, in exercise of its revisional powers, is whether the learned Tribunal

has erred in law in exercising its jurisdiction u/s 152 of Civil Procedure Code.

10. Bearing in mind the above aspects of matter, when I turn to the award dated 29.4.2003, aforementioned, I notice that the learned Tribunal''s

specific finding, in its award dated 12.11.2002, aforementioned was as follows:

But no voucher whatsoever has been inducted into evidence showing payment of Rs. 1,20,000 and, therefore, no award can be passed on the said

amount.

11. In the face of the above finding, it cannot be said that there was an arithmetical or clerical error in totalling the amount incurred as expenses by

the said insurer. What the above observations made by the learned Tribunal show is that the learned Tribunal had rejected the claimant''s claim that

the vouchers in respect of the sum of Rs. 1,20,000 had been brought into the evidence on record. It has now, been contended by Mr. G.C.

Phukan, learned Counsel for the claimant-opposite party, that Exh. 405 reflected the expenses incurred by the injured for his treatment at Patna

and by the impugned order dated 29.4.2003, the learned Tribunal has merely corrected this clerical or arithmetical error. On a close scrutiny of

Exh. 405, what one notices is that it is a certificate and not a voucher. In the light of this fact, when the observations made by the learned Tribunal

is to the effect that no voucher regarding the said expenditure incurred by the injured for his treatment at Patna had been brought into the evidence

on record, this specific finding could not have been reversed by taking recourse to Section 152 of the Civil Procedure Code. It is trite that Section

152 can be invoked for the purpose of correcting clerical or arithmetical mistakes, but the specific finding reached by a court or Tribunal cannot be

reversed or corrected by taking recourse to Section 152 howsoever erroneous the finding may have been. The power conferred by Section 152

contemplates correction of mistakes of ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree

or order. Court or Tribunal, as the case may be, becomes functus officio and does not remain entitled to vary the terms of the judgments, decrees

and orders earlier passed.

12. In the case at hand, the learned Tribunal has, as indicated hereinabove, reversed its finding arrived at its award dated 12.11.2002,

aforementioned and this was not permissible under the law. Reference, therefore, made by Mr. S. Dutta, in this regard to the case of Dwaraka Das

Vs. State of Madhya Pradesh and Another, is not misplaced, for in Dwarka Das (supra), the Supreme Court has held and observed as follows:

(6) Section 152, Civil Procedure Code, provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors

arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its

ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is

that after the passing of the judgment, decree or order, court or the Tribunal becomes functus officio and thus being not be entitled to vary the

terms of the judgments, decrees and orders earlier passed. The correction contemplated are of correcting only accidental omission or mistakes and

not all omissions and mistake which might have been committed by the court while passing the judgment, decree or order. The omission sought to

be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file

appeal or review application. It implies that the section cannot be pressed into service to correct an omission, which is intentional, how erroneous

that may be.

13. In fact, the Apex Court in Dwaraka Das Vs. State of Madhya Pradesh and Another, deprecated the practice of correcting or reversing

findings by taking recourse to Section 152, when it observed, ""it has been noticed that the courts below have been liberally construing and applying

the provisions of Sections 151 and 152 of the CPC can under the cover of the aforesaid sections modify, alter or add to the terms of its original

judgment, decree or order. In the instant case, the trial court had specifically held the respondent State liable to pay future interest only, despite the

prayer of the appellant for grant of interest with effect from the date of the alleged breach, which impliedly meant that the court had rejected the

claim of the appellant insofar as pendente lite interest was concerned. The omission in not granting the pendente lite interest could not be held to be

accidental omission or mistake as was wrongly done by the trial court while order dated 30.11.93. The High Court was, therefore, justified in the

setting aside the aforesaid order by accepting the revision petition filed by the State"".

14. I may also pause here to point out that Mr. Phukan has referred to the/ decision in Bijay Kumar Saraogi v. State of Jharkhand AIR 2005

SCW 2421 . This decision does not help the case of the claimant-opposite party inasmuch as the Apex Court, in this case too, has clearly held that

a bare perusal of Section 152 makes it clear that Section 152, CPC can be invoked for the limited purpose of correcting clerical errors or

arithmetical mistakes in the judgment. The Apex Court has further observed in Bijay Kumar Saraogi (supra) thus, ""The section cannot be invoked

for claiming substantive relief, which was not granted under the decree, or as the pretext to get the order, which has attained finality reviewed"". If

any authority is required for this proposition, one may refer to the decision of this court in State of Punjab Vs. Darshan Singh,

15. What crystallises from the above discussion is that in the facts and circumstances of the present case, invoking of the jurisdiction by the learned

Tribunal u/s 152 of the CPC is not sustainable in law. The fallout of this conclusion is that the petition made u/s 152 of the CPC by the claimant-

opposite party was not maintainable.

16. In the result and for the reasons discussed above, this revision succeeds and the impugned order dated 29.4.2003, aforementioned is hereby

set aside. The claimant-opposite party is, however, left at liberty to take recourse to such provisions of law as may be available to her for obtaining

relief, which she claims to be entitled to.