(2000) 08 GAU CK 0016

Gauhati High Court (Agartala Bench)

Case No: Writ Petition (Civil) No. 341 of 2000

National Insurance Company Ltd.		APPELLANT
	Vs	
Sadhana Lodh and Another		RESPONDENT

Date of Decision: Aug. 8, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 226, 227
- Motor Vehicles Act, 1988 - Section 149, 166, 168

Citation: (2000) 3 GLT 1

Hon'ble Judges: A.K. Patnaik, J

Bench: Single Bench

Advocate: K. Bhattacharjee, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Patnaik, J.
Heard Mr. K. Bhattacharjee, learned Counsel for the Petitioner.

2. This is an application under Article 227 of the Constitution against the judgment and award dated 30.3.2000 passed in Case No. Title Suit (MAC) 239 of 1996 u/s 166 of the Motor Vehicles Act (herein after referred to as "the Act") by the Motor Accident Claims Tribunal, West Tripura, Agartala. By the said judgment and award a sum of Rs. 3,50,000/- as compensation with interest @ 11% per annum with effect from 5.6.1996 has been awarded against the Petitioner Insurance Company for the death of Dipak Lodh, the son of the claimant Respondent No. 1.

3. Mr. Bhattacharjee, the learned Counsel for the Petitioner submitted that by a Full Bench judgment of this Court in Writ Appeal No. 100 of 1998 delivered on 6.4.2000 it has been held that an application for judicial review under Article 226/227 of the

Constitution of India is maintainable against an award of the Tribunal under the Act at the instance of the Insurer on grounds other than those mentioned u/s 149 of the Act. Mr. Bhattacharjee vehemently contented that a perusal of the impugned judgment and award of the Motor Accident Claims Tribunal would show that the Tribunal has followed the guidelines contained in the Second Schedule of the Act in calculating the amount of compensation. In other words, the Tribunal has adopted the multiplier of 17 while assessing the quantum of compensation. He contended that the provision in the said second schedule of the Act has been ignored inasmuch as the medical expenses as per the said second schedule can be awarded up to a maximum amount of Rs. 15,000/- whereas in the impugned judgment and award the Tribunal has awarded the medical expenses to the tune of Rs. 42,000/-. He further argued that in the impugned judgment and award the Tribunal has only considered the age of the deceased while determining the multiplier of 17, but has ignored the following observation of the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,

Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier.

4. Mr. Bhattacharjee also argued that in the instant case of the accident occurred not only on account of the negligence of the driver of the Jeep which is insured with the Petitioner Insurance Company but also on account of the negligence of the deceased who was on the Motor Cycle. He pointed out that u/s 168 of the Act, the Tribunal could only make an award determining the amount of compensation which appears to be just and, therefore, the Tribunal would exceed its jurisdiction if it makes an award of compensation which is not just.

5. In the Full Bench judgment dated 6.4.2000 in the case of Smt. Milan Rani Saha Vs. New India Assurance Company Ltd., Agartala and Others, the Full Bench of this Court while holding that an application for judicial review under Article 226/227 of the Constitution of India is maintainable against an award of the Tribunal under the Act at the instance of the Insurer on the grounds other than those mentioned u/s 149 of the Act observed.

The High Court''s powers under Article 227 of the Constitution though initially shown to the restricted only to the cases of grave dereliction of duties and gross violation, to be used/exercised most sparingly in cases of grave injustice, but there is a shift of the paradigm. The trend is now liberralised. It, however, cannot be used as an appellate or revisional power. The High Court in exercise of its power will not substitute its own judgment to that of an inferior Court on a question of fact or interfere with the legitimate exercise of powers/jurisdiction by the inferior Court, unless it is arbitrary, capricious or there is error of finding of jurisdictional fact (Ref. Achutananda Baidya Vs. Prafullya Kumar Gayen and others, The power under Article

227 of the Constitution is wider than that of Section 115 CPC and may be used even when Section 115 CPC is not applicable. The powers of judicial superintendence under Article 226/227 of the Constitution is not limited to technical rules. The power under Article 227 of the Constitution may even be exercised suo motu by the Court.

It is thus clear from the aforesaid observation of the Full Bench that the jurisdiction of the High Court under Article 226/227 of the Constitution in respect of an judgment and award of the Tribunal under the Act cannot be used as an appellate or revisional power and the High Court in exercise of its power will not substitute its own judgment for that of the Tribunal on a question of fact or interfere with the legitimate exercise of powers/jurisdiction by the Tribunal, unless the judgment and award of the Tribunal is arbitrary, capricious or there is error of finding of jurisdictional fact. So where the Tribunal makes an award determining an amount of compensation which is not just or fair, the High Court may interfere with such award under Article 226/227 of the Constitution on the ground that it is arbitrary or capricious. Therefore, this Court will have to see whether die compensation awarded by the Tribunal in the impugned judgment and award is just and lair or it is unreasonable and arbitrary requiring interference by this Court. While exercising the power of judicial review under Article 226/227 of the Constitution this Court will not convert itself to an appellate authority over that of the Tribunal and substitute its own k views for that of the Tribunal on a question of fact.

6. As to whether the accident in the instant case accrued on account of the sole negligence of the driver of the jeep or on account of the contributory negligence of the driver of the jeep and of the deceased Dipak Lodh who was travelling in the motor cycle, is a question of fact and the Tribunal has recorded the finding on the basis of evidence available before it that the accident occurred due to rash l and negligent driving of the driver of the jeep. In my considered opinion, the High Court under Article 226/227 of the Constitution cannot interfere with this finding of the Tribunal on the question of fact recorded on the basis of evidence before it.

7. As regards the quantum of compensation, the findings ofthe Tribunal in the impugned judgment and award are extracted herein below:

What should be the compensation: From the death certificate and other papers regarding medical treatment of deceased Dipak Lodh it is found that he was 26 years old at the time of accident/death. In her evidence the Claimant-Petitioner has said that deceased Dipak Lodh was a mechanic having a monthly income of Rs. 4,000/-. P.W. 2, of course, does not say anything about the income. No income certificate has also been filed. In the family besides mother of the deceased whether there is any other person it has not been indicated. Besides that from the monthly income the deceased had his own personal expenditure. So, it is assessed that minimum loss of income per month would be at least Rs. 1,500/-. Considering the age 17 is accepted as multiplier. Thus total loss of income comes to Rs. 1500 x 12 x 17 = Rs. 3,06,000/-. Besides that for few months he had undergone medical

treatment at G.B. Hospital as well as Calcutta. Good number of cash memos and vouchers have been filed in respect of medical treatment of the deceased. Of course air tickets for going from Agartala to Calcutta with the patient other conveyance Charges incurred'' Calcutta, vouchers regarding stay at Hotel, etc. have not been filed. The cash memos which have been filed from these papers it is found that around Rs. 34,000/- was spent. Towards conveyance of charges stay at Calcutta some expenditure were also incurred. That being the position total Rs. 42,000/- (Rupees Forty two thousand) is allowed towards medical treatment. Rs. 2000/- is allowed towards funeral charges. Thus total amount comes to Rs. 3,50,000/- (Rupees three Lac Fifty thousand). Along with this amount interest is payable @ 11% per annum w.e.f. 5.6.1996 the date of finding the claim petition.

A reading of the aforesaid extract from the impugned judgment and award would show that the Tribunal has taken the multiplier of 17. It is, however, not clear as to whether the said multiplier of 17 has been taken on the basis of the age of the deceased or on the basis of the age of the parents of the deceased. It is, therefore, difficult to accept the contention of Mr. Bhattacharjee that the Tribunal has taken the age of only the deceased and not that of the parent while determining the multiplier on 17. That apart, the observation of the Supreme Court in the case of U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. (supra) quoted above would show that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased and as an example it has been indicated that where the deceased is a bachelor and died at the age of 45 and his dependants are his parents, the age of the parents would have been relevant in the choice of the multiplier. It is, therefore, a question of fact in each case as to what multiplier the Tribunal will adopt in assessing the compensation. In some cases the Tribunal may adopt a multiplier solely on the basis of the age of the deceased and in some other cases the Tribunal may adopt a multiplier on the basis of the age of the parents. No hard and fast rule can be laid down that in no case the age of the deceased only can be taken into consideration by the Tribunal. This again being a question of fact determined by the Tribunal cannot be interfered with by this Court under Article 226/227 of the Constitution.

8. As to the award of a sum of Rs. 42,000/- by the Tribunal towards medical expenses, the argument of Mr. Bhattacharjee is that the second schedule to the Act permits only a maximum amount of Rs. 15,000/- to be awarded by the Tribunal towards medical expenses, but in the case of U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. (supra) the Supreme Court has held that the second schedule to the Act suffers from several defects and that neither the Tribunal or the courts can go by the ready reckoner and it could be taken only as a guide by the Tribunal. Mr. Bhattacharjee vehemently argued that the fact that the Tribunal has adopted the multiplier of 17 would show that the Tribunal has taken the second schedule to the Act as a guide. This contention of Mr. Bhattacharjee is misconceived as it is nowhere stated in the award of the Tribunal relating to

calculation of the compensation extracted above that the second schedule to the Act has been taken as a guide. The multiplier method adopted in the second schedule existed even without the second schedule as has been indicated by the Supreme Court in the aforesaid case of U.P. State Road Transport Corporation and Ors. v. Trilok Chadra and Ors. (supra). The method has been adopted in the case of Devies and Nance in England. Thus it is not correct that the Tribunal has been guided by the Second Schedule to the Act while adopting the multiplier of 17 and, therefore, the Tribunal should have restricted the medical expenses at Rs. 15,000/- as indicated in the Second Schedule to the Act It appears from the award of the Tribunal as extracted above that the Tribunal has taken into consideration the expenses incurred for the deceased to travel from Agartala to Calcutta in Air and other conveyance charges at Calcutta and the vouchers regarding stay in the hotel etc. and the cash memos and ultimately awarded a sum of Rs. 42,000/- as medical expenses incurred by the deceased prior to his death. The medical expenses of Rs. 42,000/- incurred prior to the death of die deceased is again a finding of fact which cannot be interfered with by the High Court under Article 226/227 of the Constitution.

9. Coming now to the contention of Mr. Bhattacharjee that the Tribunal is vested with the jurisdiction to only determine compensation which is just, it appears that in the instant case die claim of die claimant-Respondent No. 1 was that the deceased Dipak Lodh was a mechanic having monthly income of Rs. 4,000 and a total amount of Rs. 24,08,000/- had been claimed on the basis of such monthly income of the said deceased, but the Tribunal has rejected the said claim of the claimant-Respondent No. 1 and has instead assessed the loss of income per month for the Petitioner at Rs. 1,500/- and awarded a compensation of Rs. 3,50,000/-. In my considered opinion, the aforesaid compensation as assessed by the Tribunal is just and reasonable and it is not a fit case in which the High Court should interfere with the impugned judgment and award of the Tribunal under Article 226/227 of the Constitution.

10. For the reasons indicated above, I am not inclined to entertain this petition under Article 227 of the Constitution and I dismiss the same.