(2004) 12 JH CK 0009

Jharkhand High Court

Case No: C.R. No''s. 127 and 134 of 2004

The New India Assurance Company Ltd.		APPELLANT
	Vs	
Ramchandra Sao and Others and Premchand Mahto and Others		RESPONDENT

Date of Decision: Dec. 23, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Motor Vehicles Act, 1988 - Section 149, 149(2)

Citation: AIR 2005 Jhar 89 : (2006) ACJ 503 : (2005) 1 ACC 581 : (2005) 1 BLJR 622

Hon'ble Judges: N.N. Tiwari, J

Bench: Single Bench

Advocate: G.C. Jha, CR No. 127 of 2004 and Alok Lal, CR No. 134 of 2004, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.
The stamp reports in both the civil revisions have given rise to a common question as to whether these civil revisions are maintainable in view of the provisions of Section 173 of the Motor Vehicles Act, 1988?

2. The question being common in both the cases, the same have been heard and being decided by this common order.

3. Civil Revision No. 127 of 2004 has been preferred against the judgment and award dated 25.5.2004 (Award sealed and signed on 25.8.2004) passed by the Presiding Officer, Motor Vehicles Claims Tribunal, Hazaribagh in Claim Case No. 105 of 1999 whereby the learned Tribunal has awarded compensation of Rs. 1,50,000/-

along with interest at the rate of 5% per annum with effect from 18.7.1991 till realization payable to the claimant by the petitioner Insurance Company.

4. The petitioner has challenged the said award, inter alia on the ground that the deceased was a minor aged about 8 years and was a non-earning member, but the learned Tribunal has wrongly adopted the multiplier method. According to the petitioner, the quantum of compensation should have been decided on a lump-sum basis. It has been contended that the Tribunal has not properly discussed the facts and evidences and has erred in recording its findings.

5. The Civil Revision No. 134 of 2004 has been filed against a judgment and award dated 26.3.2004 passed by the 12th Additional District Judge-cum-MATC Judge, Dhanbad in Title (Motor Vehicle) Suit No. 183 of 2002, whereby learned Tribunal has directed the petitioner-Insurance Company to pay compensation of Rs. 1,50,000/- to the claimants. In this petition also the petitioner has assailed the validity of award by which the said compensation amount has been awarded, by applying the multiplier method though the deceased was a minor aged eight years.

6. In view of the points raised in these cases, the facts of the cases are not of much relevance. The revisionists have contested the awards only on the point of law.

7. On the point of maintainability of these civil revisions, the learned counsel for the petitioners in both the cases submitted that in view of the limited scope of contest by the insurer only on the ground mentioned in Section 149 of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act), the petitioner has no scope to file an appeal on other grounds than those enumerated in Section 149(2) of the said, Act. According to the learned counsel, the grounds on the basis of which the impugned judgments and awards have been challenged do not fall within the ambit of Section 149(2) and no appeal is maintainable. There being no other remedy, the petitioners have only remedy to file the instant revision application before this Court u/s 115 of the Code of Civil Procedure. The learned counsel placed their reliance on a decision of the Apex Court in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, . The relevant part of the judgment reads thus :-

"6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated ground and the appeal being a product of the statute is not open to an insurer to take any plea other than those provided u/s 149(2) of the Act (see National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227

of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court u/s 115, CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision u/s 115, CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of Ming a revision petition before the High Court u/s 115, CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution."

8. The learned counsel for the petitioners in both the cases submitted that the State Legislature has not barred remedy of filing revision petition before this Court u/s 115 of the CPC and in view of the said decision of the Supreme Court, no petition under Article 226 or 227 of the Constitution would lie. In that circumstance, they are left with'' only remedy to file this civil revision application.

9. From perusal of the said civil revision applications it appears that the grounds which has been taken are not one of the grounds which are provided u/s 149(2) of the said Act. In view of the above, the insurer has no right to file an appeal against the award(s) of the Tribunal. In such situation, shelter has been taken under the provisions of Section 115 of the Code of Civil Procedure. Section 115 of the CPC reads thus :-

"115. Revision.-(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit :

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation.-In this section, the ex-pression "any case which has been decided; includes any order made, or any order deciding an issue, in the course, of a suit or other proceeding."

10. From the very opening sentence of Section, 115 of the CPC it appears that the High Court has discretion to call for the record of any case Which has been decided by any Court subordinate to such High Court in which no appeal lies thereto. If the decision of the Court can be brought under the clauses (a), (b) and (c) of sub-section (1) and the proviso to the said sub-section of the Section 115.

11. In Baldevdas Shivlal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, the Supreme Court has also held that the High Court is clothed with a power to call for the records of any case decided by any Court subordinate to it and in which no appeal lies if the conditions or any of them as given u/s 115 is fulfilled. Earlier, in S. Rama Iyer Vs. Sundarasa Ponnapoondar, the Apex Court held that an order of a Revenue Tribunal is revisible by the High Court if the Tribunal''s decision touches the jurisdictional law. In the recent decision of Sadhana Lodh v. National Insurance Co. Ltd (supra), the Supreme Court has observed that where remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 of the Code of Civil Procedure. The Supreme Court in the said case has also held that where is alternative remedy, the petitioner under Article 226 or 227 of the Constitution is not maintainable if the remedy of filing revision before the High Court u/s 115 of the CPC has not been expressly barred by the State enactment.

12. In view of the above discussion of law and the decisions of the Supreme Court, I hold that the instant civil revision applications are maintainable as the grounds taken in the revision applications do not come within the ambit of Section 149(2) of the Act as also remedy by way of filing revision before the High Court u/s 115 of the CPC has not been expressly barred by any State enactment. This point of maintainability of these civil revision applications is thus allowed in favour of the petitioners.

13. While addressing this Court on the point of maintainability the learned counsel also advanced their submissions assailing the awards and judgments of the Tribunal on merit mainly on the ground that the Tribunal has erroneously adopted the multiplier method in determining the quantum of compensation. According to the learned counsel, since, at the relevant time, the deceased were minor(s) in both the

cases, the learned Tribunal should have allowed the compensation on lumpsum basis, considering the family status of the deceased and having done otherwise the learned Tribunal has committed serious error of law. However, the learned counsel could not bring to my notice any cogent ground to conclude that there is any jurisdictional error in adopting the said method of deciding the quantum of compensation by the learned tribunals. It is well settled that the High Court in its revisional jurisdiction cannot interfere with a decision if there is no jurisdictional error. Reference may be made to the decision of the Supreme Court in Maitreyee Banerjee Vs. Prabir Kumar Mukherjee, wherein the Apex Court held that an error of law does not relate to a question of jurisdiction and on that basis there cannot be interference of the High Court in revisional jurisdiction. Reference may be also made to the decision of the Supreme Court in S. Rama Iyer v. Sundaresa Ponnapoondar, reported in 1966 SO 1431. In the Instant case ho error could be pointed out amounting to jurisdictional error in the impugned awards warranting any interference in exercise of revisional jurisdiction u/s 115 of the Civil Procedure Code. There is, thus no merit in these Civil revision applications and the same are, accordingly dismissed.