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(2003) 06 AP CK 0004

Andhra Pradesh High Court

Case No: None

New India Assurance Co. Ltd.	APPELLANT
Vs	
Moror Alexy and Others	RESPONDENT

Date of Decision: June 11, 2003

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 147, 163A, 168
- Civil Procedure Code, 1908 (CPC) - Section 105, 151

Citation: (2005) 3 ACC 405

Hon'ble Judges: G. Bikshapathy, J; C.Y. Somayajulu, J

Bench: Division Bench

Judgement

G. Bikshapathy, J.
This appeal is filed against the order passed by the learned Single Judge of this Court in A.A.O. No. 211 of 1999 confirming the interim order passed by the learned Motor Accident Claims Tribunal-cum-Additional District Judge, Srikakulam in O.P. No. 626 of 1998 dated 1.2.1999.

2. A few facts are necessary for appreciating the intricacies of this case A Russian couple was travelling in their foreign make vehicle on 14.10.1998. While so, a lorry bearing No. WB 41-8048 hit the car in which the Russian couple was travelling and consequently it caused extensive damage to the car. Thereupon, a claim was filed by the owner of the car in O.P. No. 626 of 1998 before the Motor Accident Claims Tribunal at Srikakulam, claiming compensation in respect of the damage caused to the car. Pending O.P. the Claims Tribunal passed interim order on 1.2.1999 directing the Insurance Company to make interim payment of Rs. 75,000/-. The said order was challenged by the Insurance Company in A.A.O. No. 211 of 1999. The learned Single Judge of this Court, by the judgment dated 12.2.1999, dismissed the appeal filed by the Insurance Company against which the present Letters Patent Appeal has been preferred.

3. Learned Counsel appearing for the Insurance Company submits that the orders of the Tribunal as well as of the learned Single Judge of this Court are wholly illegal and without jurisdiction. Learned Counsel would submit that u/s 140 of the Motor Vehicles Act, 1988 ("the Act" for brevity), the amount payable under "no fault liability" is only Rs. 50,000/- and that too it becomes payable only in case of death or disablement and not in a case where damage; is caused to the property. He would further submit that in case of damage to the property, the maximum amount that is permissible by virtue of the policy obtained is only Rs. 6,000 unless extra premium is paid to cover the unlimited liability it is also submitted by the learned Counsel for the Insurance Company that the Tribunal has no inherent power to award interim compensation much less by invoking Section 151 of the Civil Procedure Code. Thus, he submits that both the orders are liable to be set aside.

4. On the other hand, the learned Counsel appearing for the respondent-claimant vehemently contends that in the interest of justice and in order to provide financial assistance to the Russian couple, who were starving for several days on account of the accident caused to the car in which they were travelling, the Tribunal had to pass the order in very peculiar and special circumstances. He, however, fairly concedes that such an order could not be passed u/s 140 of the Act. But, the learned Counsel would submit that Section 151, CPC can be invoked by the Tribunal for rendering substantial justice and thus the orders under challenge in this appeal are quite legal and valid.

5. We have heard the learned Counsel for the parties.

6. Admittedly, the O.P. is still pending before the Tribunal at Srikakulam. The question that arises for consideration is whether the Tribunal can pass an interim award u/s 140 of the Act or u/s 151, CPC pending the O.P. proceedings and that too in respect of damage caused to the property. Section 140 of the Act is extracted hereunder:

Liability to pay compensation in certain cases on the principle of no fault.-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-Section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the1 amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163-A.

7. From a reading of the above provision it is clear that in case of death or disablement, claimants are entitled for compensation under "no fault liability" to the extent of the amounts mentioned therein, viz., fifty thousand and twenty-five thousand respectively. Admittedly, it is a case of claim for damage to the property.

8. We have gone through the judgment of the Tribunal and of the learned Single Judge. Obviously, sympathy overclouded the statutory provisions. It may be true that the couple was subjected to harassment and mental agony. But, that cannot be a ground to grant the relief in violation of the statutory provisions.

9. Section 140 of the Act could not be invoked under any circumstances. Only tinder Sub-section (2) of Section 147, the liability under the Act policy in respect of damage to the property of a third party the limit is fixed at Rs. 6,000/- unless extra premium is paid to cover unlimited liability. Section 151, CPC can be pressed into service only when there is no specific provision of law to meet the ends of justice and that cannot be invoked when a statute specifically contemplates. Section 140 is in the nature of interim relief. Before the compensation is finally determined u/s 168, it is permissible for the Tribunal to award compensation under "no fault liability". Therefore, when once Section 140 of the Act meets the situation, Section 151, CPC can never be invoked. This is nothing but an illegal exercise of power u/s 151, Civil Procedure Code. What cannot be achieved directly u/s 140 of the Act cannot be allowed to be achieved by invoking Section 151 of Civil Procedure Code.

10. The meaning of the words "inherent powers" as contained in Black"s Law Dictionary, 6th Edn., reads thus:

An authority possessed without its being derived from another. A right, ability or faculty of doing a thing, without receiving that right, ability or faculty from another. Powers originating from the nature of Government or sovereignty, i.e., powers over and beyond those explicitly granted in the Constitution or reasonably to be implied from express grants; e.g., in the foreign policy area, the Executive"s inherent powers have been held to confer authority upon the President to settle the claims of American nationals against a

foreign State a part of diplomatic agreement.

11. The expression "inherent powers of Court" in Black"s Law Dictionary, 6th Edn., means:

The "inherent power of a Court" is that which is necessary for the proper and complete administration of justice and such power is resident in all Courts of superior jurisdiction and essential to their existence; sentencing and contempt powers.

12. In West"s Legal Thesaurus Dictionary, the term "inherent power" is explained as "an authority possessed without its being derived from another, a power in the nature of the organisation or person".

13. In Merriam Webster"s Dictionary of Law, "implied power" is described as "a power that is reasonably necessary and appropriate to carry out the purposes of a power expressly granted".

14. In Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others, , the Supreme Court while interpreting the scope of inherent powers u/s 151 observed as follows:

The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Civil Procedure Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the Court conferred u/s 151 of the Code to make a suitable order to prevent the abuse of the process of the Court.

15. Again in Nain Singh Vs. Koonwarjee and Others, , the Supreme Court observed thus:

The High Court, in our opinion, erred in holding that the correctness of the remand order was open to review by it. The order in question was made under Rule 23 Order 41, Civil Procedure Code. That order was appealable under Order 43 of that Code. As the same was not appealed against, its correctness was no more open to examination in view of Section 105(2) of the Code which lays down that where any party aggrieved by an order of remand from which an appeal lies does not appeal there from he shall thereafter be precluded from disputing its correctness. The High Court has misconceived the scope of its inherent powers. Under the inherent power of Courts recognised by Section 151, Civil Procedure Code, 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. In other words, the Court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the Code and he neglected to avail himself of the same. Further, the power u/s 151 of the Code cannot be exercised as an appellate power.

16. In Padam Sen and Another Vs. The State of Uttar Pradesh, , the Supreme Court observed thus:

The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and, therefore, it must be held that the Court is free to exercise them for the purpose mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognised that the inherent powers is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.

17. It was further held that the inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights, which any litigant possesses.

18. Thus, we do not like to burden this judgment with catena of decisions on similar lines. Suffice it to say that the Courts have been uniformly holding that when a statute contains a particular mode for invoking the rights and remedies, the same cannot be given a go-bye and invoke Section 151 in the guise of seeking substantive justice and the Courts have no such power to overlook statutory provision and grant relief u/s 151 of the Civil Procedure Code. In effect, Section 151 is only a supplementary and complementary to the powers expressly conferred upon it by other provisions of the Civil Procedure Code. But, it cannot be treated as substituted powers. Therefore, the powers u/s 151 are not intended to enable the Court to create fresh rights in the parties, but they are only meant to enable the Court to pass such other orders to meet the ends of justice as may be necessary keeping in view the rights which are conferred on parties by substantive law. Hence, considering the above state of affairs and the decisions of the Supreme Court, we find that the very approach of the Tribunal as confirmed by the learned Single Judge is erroneous and contrary to law.

19. Further, it is not in dispute that in case of damage to the property, the Insurance Company is liable only to the extent of Rs. 6,000/- unless extra premium is paid. There are the issues which are yet to be decided in the main O.P. The order was passed by the Tribunal even before the notices were served on the driver of the lorry. The Insurance Company cannot be made the scapegoat to meet the situation by stretching the theory of inherent powers to an area where such power does not exist.

20. In the circumstances, we are of the clear view that the judgment of the learned Single Judge of this Court as well as the order passed by the Claims Tribunal are not sustainable and they are accordingly set aside. The appeal is allowed and the Motor Accident Claims Tribunal, Srikakulam, is directed to dispose of O.P. No. 626 of 1998 as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. No order as to costs.