

(2011) 07 CAL CK 0040

Calcutta High Court

Case No: C.O. No. 3993 of 2007

National Insurance Company
Limited

APPELLANT

Vs

Chhabirani Kar and Others

RESPONDENT

Date of Decision: July 28, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 169(2)
- West Bengal Motor Vehicles Rules, 1989 - Rule 342

Citation: (2013) ACJ 1130 : (2012) 2 CHN 40 : (2012) 1 TAC 86

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Rajesh Singh, for the Appellant; Krishanu Banik, for the Respondent

Final Decision: Dismissed

Judgement

Joymalya Bagchi, J.

This application at the behest of the petitioner/ Insurance Company throws a challenge to the order dated 26th February, 2007 in Money Execution Case No. 1 of 2005 rejecting a prayer for review of the award dated 31st August, 2004 passed by the Motor Accident Claims Tribunal, Fast Track, 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 2 of 2004 116/1999. The case of the petitioner/Insurance Company is that while disposing off the application u/s 166 of the Motor Vehicles Act, 1988, the Tribunal passed award directing that the respondent/claimants are entitled to get compensation of Rs. 4,000/- from the petitioner/Insurance Company. It is the contention of the learned lawyer appearing for the petitioner that in the said award the Tribunal has, inter alia, held that the accident occurred due to rash and negligent driving of the driver of the said mini truck bearing No. WB-33/0881, resulting in the death of the victim Madhusudan Kar. In spite of recording such finding, the Tribunal erroneously in its award directed the petitioner/ Insurance Company to pay compensation u/s 166 of Motor Vehicles Act, 1988 although the

petitioner is not the insurer of the said mini truck. Learned lawyer submitted that an award directing payment of compensation u/s 166 of the Motor Vehicles Act, 1988, can be imposed on the insurer of the offending vehicle which had caused the accident and not upon the insurer of the other vehicle.

2. He has further argued that since the petitioner/Insurance Company is not the insurer of the offending mini truck WB-33/0881 but is the insurer of the other vehicle namely, Bus No. WB-29/1676 which was involved in the accident, the petitioner cannot be made liable to pay such compensation in the light of the law declared by the Supreme Court in the case of *Oriental Insurance Company Ltd. v. Premlata Shukla and Others*, 2007 (3) T.A.C. 11 (S.C.). In the aforesaid case the Supreme Court has, inter alia, held that the Tribunal must come to a finding as to the driver of which vehicle indulged in rash and negligent driving and the compensation u/s 166 of the Motor Vehicles Act, 1988 would be payable by the insurer of the said offending vehicle. Relying on such decision, the learned lawyer has argued that the award of the Tribunal suffered from an error apparent on the face of the record and, the same was therefore, amenable to review.

3. With regard to the issue as to whether the Tribunal had the power to review its own order or not, the learned lawyer referred to Section 169(2) of the Motor Vehicles Act, 1988 read with Rule 342 of West Bengal Motor Vehicles Rules, 1989. According to him, although the power of review has not been specifically conferred on the Tribunal, a conjoint reading of the said provisions would show that the Tribunal is vested with certain powers of a Civil Court, and therefore, by necessary implication would have the power of review.

4. Opposing the said application, the learned lawyer for the respondent/claimants submits that the issue whether the Tribunal has power of review is no longer res Integra and has been decided by a Division Bench of this Court in the case of *Rina Mukherjee & Anr. v. New India Assurance Co. Ltd. & Anr.*, IV (2008) A.C.C. 280 (D.B.).

5. In the aforesaid judgment (supra) this Court has, inter alia, held :

.....although no review lies on merit unless the statute specifically provides for it, nevertheless, when a review is sought for on the ground of procedural defect, the inadvertent error committed by the Tribunal should be corrected ex debito justitia to prevent the abuse of its process and such power inheres in every Court and Tribunal.....

In the said decision it has also been held :

.....In the case before us, the Insurance Company, however, did not come forward with a case of procedural review but the application was one for review on merit by taking "an error apparent on the face of the award....."

From the aforesaid ratio it is clear that the Tribunal does not have the power to review on merits but has a very limited power of review on the ground of procedural

defects. Such power has been termed as procedural review in contradistinction to the power of review on merits. Relying on such ratio, the learned lawyer for the respondent/claimants further submits that no ground having been made out in the facts of the instant case where procedural review may be resorted to, the Tribunal rightly rejected the prayer of the petitioner for substantive review on merits as it lacked jurisdiction to entertain such plea.

6. I have perused the order and considered the submissions of both the parties. Now the question which falls for decision is whether the award passed by the Tribunal contrary to the law declared by the Apex Court in the case reported in 2007 (3) T.A.C. 11 (S.C.), as claimed by the petitioner, would fall within the species of "procedural review" so as to enable the petitioner to seek review of the same.

7. The Supreme Court in the case of [Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another](#), elucidated the concept of procedural review in contrast to review on merits in the following manner :

.....it is apparent that where a Court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding..

8. Applying the ratio of the aforesaid decision to the instant case, I hold that the defect which has been complained of by the petitioner is not a fundamental procedural error which goes to the root of the proceeding and perse vitiates the same necessitating an interference in the domain of procedural review. It is, at its height, an error on merits which may be remedied otherwise but definitely not within the limited scope of procedural review jurisdiction. For the reasons as aforesaid, I do not interfere with the order impugned and I dismiss the instant application.

9. All interim orders stand vacated.

10. There shall be no order as to costs.