Supreme Court of India
Sadhana Lodh vs National Insurance Company Ltd. & ... on 24 January, 2003
Author: . Khare
Bench: Cji., S. B. Sinha, Ar. Lakshmanan

CASE NO.:
Appeal (civil) 557 of 2003

PETITIONER:
Sadhana Lodh

RESPONDENT:
National Insurance Company Ltd. & Anr.

DATE OF JUDGMENT: 24/01/2003

BENCH:
CJI., S. B. Sinha & AR. Lakshmanan

JUDGMENT:

J U D G M E N T (Arising out of S.L.P. No. 21854 of 2001) KHARE, CJI.

Leave granted.

The appellant's son, aged 24 years and drawing a sum of Rs. 4,000/- per month, died in a motor vehicle accident. The appellant herein filed a claim petition before the Motor Accidents Claims Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal awarded a sum of Rs. 3,50,000/- as compensation. Aggrieved, the insurer, who is respondent No. 1 herein, filed a writ petition under Articles 226 and 227 of the Constitution of India before the Guwahati High Court. A learned Single Judge of the High Court dismissed the writ petition. Aggrieved, the insurer preferred a Letters Patent Appeal before the Division Bench of the High Court. Before the High Court, the claimant took an objection that since petition under Article 226/227 is not maintainable, therefore, the appeal is totally misconceived and the same deserves dismissal on that ground alone. However, the Division Bench of the High Court, after overruling the objection allowed the appeal preferred by the insurer and reduced the compensation from Rs. 3,50,000/- to Rs. 3,00,000/-. It is against the said judgment, the present appeal has been filed by way of special leave petition.

Learned counsel appearing for the appellant urged that in view of the fact that under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), a remedy by way of appeal to the High Court is available to the insurer against an award given by the Tribunal, and, therefore, the filing of a petition under Article 227 of the Constitution was misconceived and deserved dismissal and the High Court ought not to have entertained and decided the writ petition on merits. We find merit in the submission.

It is not disputed that under Section 173 of the Act, an insurer has right to file an appeal before the High Court on limited grounds available under Section 149(2) of the Act. However, in a situation where there is a collusion between the claimant and the insured or the insured does not contest the

claim and further if the Tribunal does not implead the insurance company to contest the claim, in such a situation it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merit, in that case it is open to the insurer to file an appeal against the award of the Tribunal on merits. Thus, in such a situation, the insurer can question the quantum of compensation awarded by the Tribunal.

However, learned counsel for the respondent argued that since an insurer has limited grounds available under Section 173 of the Act, it is open to an insurer to file a petition under Article 226/227 of the Constitution.

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 Article 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 grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see National Insurance Co. Ltd, Chandigarh vs. Nicolletta Rohtagi and others 2002(7) SCC 456). 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 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 under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 of 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 an 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 under Section 115 C.P.C., 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 filing a revision petition before the High Court under Section 115 C.P.C., 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 High Court under Article 226 of the Constitution.

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision.

For the aforesaid reasons, we are of the view that since the insurer has a remedy by filling an appeal before the High Court, the High Court ought not to have entertained the petition under Article

226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law.