



IN THE HIGH COURT OF SIKKIM AT GANGTOK

(Civil Revisional Jurisdiction)

Civil Revision Petition No. 04 of 2011

DATED 17-08-2011

CORAM
THE HON'BLE MR. JUSTICE S. P. WANGDI
ACTING CHIEF JUSTICE

The Branch Manager,
National Insurance Co.Ltd.,
Gangtok Branch,
P.O. & P.S. Gangtok,
East Sikkim. ... **Petitioner**

Versus

1. Shri Gopal Tamang,
S/o Late Singa Bdr. Tamang,
R/o Hatighisa, Naxalbari,
Distt. Darjeeling,
West Bengal.
2. Smt. Phul Maya Tamang,
W/O Shri Gopal Tamang,
R/o Hatighisa, Naxalbari,
Distt. Darjeeling,
West Bengal. **Respondents.**
3. Shri Binod Pd. Sharma,
Owner of vehicle No.SK-03/
2485,
S/o Shri R. N. Sharma,
C/o Mahesh Medical Store,
P.O. & P.S. Namchi,
South Sikkim.
.... **Proforma Respoondent**

FOR THE PETITIONER : MR. KARMA T. BHUTIA, SENIOR
ADVOCATE WITH
MR. BHUPENDRA GIRI.



FOR THE RESPONDENT : MR. A. K. UPADHYAYA, SENIOR
NOS.1 & 2 ADVOCATE WITH MS. MUKUL R.
PARAJULI, MR. THUPDEN G.
BHUTIA AND MS. DAWA
JANGMU SHERPA, ADVOCATES.

FOR THE PROFORMA : MR. BINOD PRASAD SHARMA,
RESPONDENT ADVOCATE

J U D G M E N T

Wangdi, ACJ

The present petition has been filed under Article 227 of the Constitution of India styled as Civil Revision Petition, seeking to challenge the judgment dated 01.12.2010, passed by the Motor Accident Claims Tribunal, South and West Districts, Sikkim at Namchi, in M.A.C.T. Case No.02 of 2010, whereby the claimants have been awarded compensation of Rs.8,20,500.00 (Rupees eight lakhs twenty thousand five hundred) only, for the death of their deceased son in a motor accident.

2. Mr. K. T. Bhutia, Ld. Senior Advocate appearing for the petitioner, submitted that in the impugned judgment, the learned Motor Accident Claims Tribunal while determining the multiplier has taken the age of the deceased and not that of the claimant. It is submitted that as per the law laid down in a catena of decisions of the Hon'ble Supreme Court, which were relied upon by this Court in the case of **National Insurance Company Ltd.**



Vs. Nakul Gurung and Others in R.F.A. No. 01 of 2009, the relevant factor is the age of the appellant and that the choice of multiplier is determined by the age of the deceased or the claimant whichever is higher. That the learned Claims Tribunal has failed to appreciate this position and has erroneously applied the age of the deceased as the relevant factor for the purpose of determining the multiplier.

3. The next contention raised on behalf of petitioner is that the daily allowance for food which was drawn by the deceased was taken as a part of his income when obviously it was his expenditure. Mr. K. T. Bhutia, drew the attention of this Court to the salary certificate, Exbt. 11, which clearly illustrates this fact.

4. I find substance in the submissions of Mr. K. T. Bhutia. The learned Claims Tribunal has committed gross error in accepting the age of the deceased son as the relevant factor for determining the multiplier when the law clearly lays down that it ought to be of that of the father, the claimant. This is a settled position of law, as we find from the case of **Ramesh Singh and Another vs. Satbir Singh and Another : (2008) 2 SCC 667**, the relevant portion of which reads as under: -



"6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in *New India Assurance Co. Ltd. Vs. Charlie* it is clear that the choice of multiplier is determined by the age of the deceased or the claimants whichever is higher....."

9. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendour of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of the child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents."

[emphasis supplied]

5. We also find from the salary certificate that the deceased was entitled to Rs.100/- as daily food allowance apart from his salary of Rs.3000/-. Therefore, Rs.100/- is clearly the expenditure of the deceased and not his income.

6. Under such circumstances, ordinarily this Court would have proceeded to alter the award, but Mr. A. K. Upadhyaya, learned Senior Advocate, who appears on behalf of respondents no. 1 and 2 as amicus curiae, raised a fundamental question as regards the maintainability of the present petition in view of the provisions of Section 149(2) read with Section 173 of the Motor Vehicles Act, 1988.



7. Mr. A. K. Upadhyaya, by relying upon the case of **Chinnama George and Others vs. N. K. Raju and Another : (2000) 4 SCC 130**, submitted that the grounds available to the Insurance Company for raising objections to the claims before the Claims Tribunal is limited to those prescribed under Section 149(2) of the Motor Vehicles Act, 1988, and that the same restriction also apply to the appeals filed under Section 173 of the Act. Reference has been made to paragraphs 5 and 8 of the judgment which we may reproduce as under: -

"5. Under Section 149 of the Act, it is the duty of the insurer to satisfy the award against the person insured in respect of third-party risks. It is not that the liability of the insurer in the present case is being disputed. The insurer can defend the proceedings before the Claims Tribunal on certain limited grounds. Sub-sections (1), (2) and (7) of Section 149 of the Act are relevant which are as under:

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third-party risks. - (1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in

9



respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and in insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely -

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely -

(i) a condition excluding the use of the vehicle -

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing; or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not only licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) - (6)
(7)
.....

5



(8) If none of the conditions as contained in sub-section (2) of Section 149 exist for the insurer to avoid the policy of insurance he is legally bound to satisfy the award. He cannot be a person aggrieved by the award. In that case the insurer will be barred from filing any appeal against the award of the Claims Tribunal."

8. Mr. K. T. Bhutia, on the other hand, referred to the judgment of the Calcutta High Court in the case of **National Insurance Co. Ltd. Vs. Probir Ganguly and Another** reported in **2010 (1) T.A.C. 187 (Cal.)** whereby placing reliance upon the case of **L. Chandra Kumar vs. Union of India and Others : AIR 1997 SC 1125**, it has been held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution and that the jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. It was, therefore, the contention of Mr. Bhutia that the present application was maintainable. However, in the later part of that very decision we find the following: -

"16. In the said case of *Sadhna Lodh (supra)*, that the Apex Court was conscious of such power of the High Court and the remedy of an aggrieved litigant under Article 227 of the Constitution of India will appear from the following observation is made in paragraph 7 of the judgment:

"The supervisory jurisdiction conferred on the High Court 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 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-weight the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision."

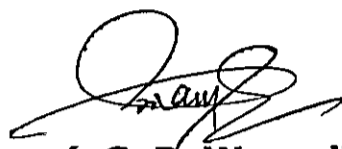
17. Therefore, notwithstanding the bar created under Section 149(2) of the Act which is applicable only to an appeal preferred under Section 173 of the Act, an Insurance Company will be entitled to challenge and Award as illegal only if the Company can show that the illegality in the Award comes within the parameters of the exercise of jurisdiction under Article 227 of the Constitution of India as mentioned above by the Apex Court in the case of *Sadhana Lodh (supra)*. If we hold otherwise, such interpretation will deprive a litigant of his constitutional right guaranteed under the Article 227 of the Constitution of India which is the basic structure of our Constitution as pointed out in the case of *L. Chandrakumar (supra)*."

9. Considering the above position of law, it would be impermissible for this Court to interfere with the decision of the Claims Tribunal in spite of it being quite erroneous on facts and the settled position of law. Section 149(2) of the Act provides for the only grounds on which the insurers are permitted to repudiate claims which would also apply to appeals under Section 173. The present petition is an application under Article 227 of the Constitution and power of review of this Court there-under is restricted to jurisdictional errors. In the present case, the decision has been rendered by the Ld. Claims Tribunal within the parameters of its jurisdiction, and, therefore, unassailable by this Court in a petition under Article 227 of the Constitution.



10. In the circumstances, the Revision Petition is dismissed with no order as to costs.

11. Records of the learned trial Court be sent back forthwith.


(**S. P. Wangdi**)
Acting Chief Justice
17.08.2011

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Internet : Yes / ~~No~~

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