Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.3798-3799 OF 2016

Sudarsan Puhan Appellant(s)

VERSUS

Jayanta Ku. Mohanty & Anr. Etc. Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) These appeals are filed by the appellant-claimant against the final judgment and order dated 09.11.2015 passed by the High Court of Orissa at Cuttack in M.A.C.A. No.690 of 2014 and M.A.C.A. No.839 of 2014 whereby the High Court allowed the appeal filed by the Insurance Company and reduced the compensation awarded by the Motor Accident

Claims Tribunal (in short 'the Tribunal") from Rs.24,62,065/- to Rs.20,00,000/- and in consequence dismissed the M.A.C.A. No.690 of 2014 filed by the appellant-claimant in terms of the main order passed in M.A.C.A. No.839 of 2014.

2) In order to appreciate the issue involved in these appeals, few facts need mention *infra*.

3) The appellant herein was the claimant before the Tribunal whereas respondent-owner of the vehicle (motorcycle) was the non-applicant No.1 and the Insurance Company was non-applicant No.2 in the appellant's claim petition.

4) On 31.10.2012, the appellant-claimant with one Dipak Kumar Pradhan was going on a motorcycle bearing No.OR-07 S 3133 from Baisinga to Baripada on National Highway 18 in the State of Orissa. The abovesaid Motorcycle met with an accident with a Mini Truck (407) wherein the

appellant-claimant suffered severe injuries. The motorcycle was owned by Jayanta Kumar Mohanty (respondent No.1 in CA 3798/2016 & respondent No.2 in CA No.3799/2016) and was insured with the National Insurance Company Ltd. (respondent No.2 in CA 3798/2016 & respondent No.1 in CA 3799/2016).

5) According to the appellant-claimant, he was in the age group of 25-27 years at the time of accident and suffered the disease of “paraplegia” (injury in spinal cord) as a result of the abovesaid accident.

6) The appellant-claimant, therefore, filed a claim petition before the Tribunal, Mayurbhanj Baripada (Orissa) under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as ‘the MV Act”) against the respondents (owner of the motorcycle and the Insurance company) and claimed reasonable compensation for the injuries sustained

by him and other statutory compensation payable under the MV Act for causing such injuries. The respondents contested the claim petition.

7) By award dated 17.05.2014, the Tribunal allowed the appellant's claim petition in part and holding the respondents(non-applicants) liable for payment of the compensation to the appellant-claimant jointly and severely awarded a total sum of Rs.24,62,065/- with interest payable at the rate of 7% per annum under various heads.

8) The appellant-claimant and the Insurance Company both felt aggrieved by the award, filed appeals in the High Court of Orissa at Cuttack.

9) So far as M.A.C.A.No.690/2014 is concerned, it was filed by the appellant-claimant for enhancement of the amount awarded by the Tribunal whereas so far as M.A.C.A.No.839/2014 is concerned, it was filed by the Insurance Company

against the award challenging therein the quantum of compensation to be on a higher side.

10) By impugned order, the High Court allowed the appeal filed by the Insurance Company (M.A.C.A.No.839/2014) in part and accordingly reduced the compensation from Rs.24,62,065/- to Rs.20,00,000/-. As a result of the main order passed in favour of the Insurance Company in their appeal, the appeal filed by the appellant-claimant (M.A.C.A. No.690/2014) seeking enhancement in the quantum of compensation was dismissed as having rendered infructuous.

11) The appellant-claimant felt aggrieved by the order of the High Court filed two appeals by way of special leave in this Court. One is filed against an order by which the claimant's appeal for enhancement in the quantum of compensation was dismissed as having rendered infructuous and the

other is filed against an order by which the Insurance Company's appeal was partly allowed by reducing the quantum of compensation from Rs.24,62,065/- to Rs.20,00,000/-.

12) It may be mentioned that so far as the Insurance Company is concerned, they have not filed any appeal against the order of the High Court. In other words, the Insurance Company seems satisfied with the quantum of compensation amount of Rs.20,00,000/-awarded by the High Court by the impugned order.

13) The short question, which arises for consideration in these two appeals, is whether the High Court was justified in allowing the Insurance Company's appeal (M.A.C.A. No.839/2014) and was, therefore, justified in reducing the quantum of compensation amount from Rs.24,62,065/- to Rs.20,00,000/- and, in consequence, was justified

in dismissing the claimant's appeal for enhancement of the quantum of compensation as having rendered infructuous.

14) Learned counsel for the appellant-claimant while assailing the legality and correctness of the impugned order contended that the High Court without adverting to any factual and legal issue arising in the case simply allowed the Insurance Company's appeal and reduced the compensation from Rs.24, 62,065/- to Rs.20,00,000/- awarded by the Tribunal and, in consequence, dismissed the appellant-claimant's appeal in a cryptic manner.

15) According to learned counsel, the High Court neither set out the facts, nor dealt with any issue, nor appreciated the ocular and documentary evidence much less in its proper perspective, nor examined the legal principles applicable to the issues arising in the case and nor rendered its

findings on any contentious issues decided by the Tribunal except to observe *"Considering the submissions of the learned counsel for the parties"* and "*I feel, the interest of justice would be best served if the awarded compensation amount of Rs.24,62,065/- is modified and reduced to Rs.20,00,000/-".*

16) Learned counsel for the appellant submitted that it was not the consideration of the case of either parties at all and yet the Insurance Company succeeded in their appeal and appellant-claimant lost which caused prejudice to him due to reduction in quantum of compensation.

17) Learned counsel further contended that it was the duty of the High Court exercising its first appellate powers under Section 173 of the M.V. Act to have dealt with all the submissions urged by the parties and after appreciating the entire evidence

should have come to its own conclusion one way or the other keeping in view the legal principles governing the issues as to whether any case was made out for enhancement or reduction in quantum of compensation, as the case may be. It was urged that since it was not done by the High Court, a jurisdictional error is committed which renders the impugned order legally unsustainable.

18) Lastly, the learned counsel urged that if his arguments are accepted, the remand of the case to the High Court to decide the appeal filed by the appellant-claimant alone on merits is inevitable.

19) Learned counsel for the respondents (Insurance Company), however, supported the impugned orders and urged that they do not call for any interference.

20) Having heard the learned counsel for the parties and on perusal of the record of the case, we

find force in the submissions of the learned counsel for the appellant-claimant.

21) The powers of the first Appellate Court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more *res integra*.

22) As far back in 1969, the learned Judge – V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while deciding the first appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") ***Kurian Chacko*** vs. ***Varkey Ouseph,*** AIR 1969 Kerala 316, reminded the first appellate court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned judge held as under:

> **"1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of**

possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation....."

(Emphasis supplied)

23) This Court also in various cases reiterated the aforesaid principle and laid down the powers of the Appellate Court under Section 96 of the Code while deciding the first appeal.

24) We consider it apposite to refer to some of the decisions.

25) In ***Santosh Hazari*** vs. ***Purushottam Tiwari (Deceased) by L.Rs***. (2001) 3 SCC 179, this Court held (at pages 188-189) as under:

> **".....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it....."**

26) The above view was followed by a three-Judge Bench decision of this Court in ***Madhukar & Ors.*** v. ***Sangram & Ors.***,(2001) 4 SCC 756, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the

issues and the evidence led by the parties before recording its findings.

27) In ***H.K.N. Swami*** v. ***Irshad Basith***,*(2005) 10 SCC 243*, this Court (at p. 244) stated as under: (SCC para 3)

> **"*3.* The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."**

28) Again in ***Jagannath*** v. ***Arulappa & Anr.***, *(2005) 12 SCC 303*, while considering the scope of Section 96 of the Code, this Court (at pp. 303-04) observed as follows: (SCC para 2)

> **"*2.* A court of first appeal can reappreciate the entire evidence and come to a different conclusion....."**

29) Again in ***B.V Nagesh & Anr.*** vs. ***H.V. Sreenivasa Murthy***, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this court reiterated the aforementioned principle with these words:

> **"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:**
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> **(*a*) the points for determination;**
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> **(*b*) the decision thereon;**
>
> **(*c*) the reasons for the decision; and**
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> **(*d*) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.**
>
> **4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of**

first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide *Santosh Hazari* v. *Purushottam Tiwari*, (2001) 3 SCC 179 at p. 188, para 15 and *Madhukar* v. *Sangram*, (2001) 4 SCC 756 at p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

30) The aforementioned cases were relied upon by this Court while reiterating the same principle in ***State Bank of India & Anr.*** vs. ***Emmsons***

International Ltd. & Anr., (2011) 12 SCC 174 and ***Uttar Pradesh State Road Transport Corporation*** vs. ***Mamta & Ors.*** (2016) 4 SCC 172.

31) An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See ***National Insurance Company Ltd.*** vs. ***Naresh Kumar & Ors.*** ((2000) 10 SCC 198 and ***State of Punjab & Anr.*** vs. ***Navdeep Kuur & Ors.*** (2004) 13 SCC 680].

32) As observed supra, as a first Appellate Court, it was the duty of the High Court to have decided the appeals keeping in view the requirements of Order XX Rule 4 (2) read with Order XLI Rule 31 of the Code which requires that judgment/order shall

contain a concise statement of the case, points for determination, decisions thereon and the reasons.

33) Coming now to the facts of the case at hand, we consider it appropriate to reproduce the order of the High Court infra:

> **"Considering the submissions made by the learned counsel for the parties and keeping in view the quantum of compensation amount awarded and the basis on which the same has been arrived at I feel, the interest of justice would be best served if the awarded compensation amount of Rs.24,62,065/- is modified and reduced to Rs.20,00,000/- which is payable to the claimant along with the awarded interest. The impugned award is modified to the said extent.**
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> **The appellant-Insurance Company is directed to deposit the modified compensation amount of Rs.20,00,000/- along with awarded interest with the learned Tribunal within six weeks hence. On deposit of the amount, the same shall be disbursed to the claimant proportionately, as per the direction of the learned Tribunal given in the impugned award. "**

34) Mere perusal of the afore-quoted order of the High Court would show that the High Court neither set out the facts of the case of the parties in detail,

nor dealt with any of the submissions urged except to mention them, nor took note of the grounds raised by the claimant and nor made any attempt to appreciate the evidence in the light of the settled legal principles applicable to the issues arising in the case and proceeded to allow the appeal filed by the Insurance Company and reduced the compensation from Rs.24,62,065/- to Rs.20,00,000/-.

35) The High Court only observed "C*onsidering the submissions of the learned counsel for the parties*" and "*I feel that compensation should have been awarded as Rs.20,00,000/- and not Rs.24,62,065/-*". No reasons were given by the High Court as to why the amount of compensation should be reduced from Rs.24,62,065/- to Rs.20,00,000/- and why it cannot be enhanced. Since the appellant-claimant had also filed appeal

for enhancement of the compensation, the entire controversy was again open for decision before the High Court at the instance of the claimant and Insurance Company. It was, therefore, necessary for the High Court to assign the reasons for not granting enhancement of compensation and/or its reduction. In the absence of any reasons, we are unable to uphold the impugned orders of the High Court.

36) As mentioned above, the Insurance Company did not choose to file any special leave to appeal in this Court against the impugned order of the High Court. The effect of non-filing of appeal is that the Insurance Company has in principle accepted the High Court's order.

37) This Court having allowed the claimant's appeal and setting aside the impugned order, it results in dismissal of the appeal filed by the

Insurance Company (M.A.C.A. No.839 of 2014) and allowing of the appeal (M.A.C.A.No.690/2014) filed by the claimant. Had the Insurance Company filed special leave to appeal against the impugned order in this Court seeking further reduction in the compensation awarded by the High Court like what the Insurance Company did when they had filed appeal before the High Court questioning *inter alia* the quantum of compensation being on higher side, the Insurance Company too would have been entitled to prosecute their appeal on merits after remand before the High Court in terms of this order. It was, however, not done by the Insurance Company.

38) In this view of the matter, the appellant-claimant alone will have a right to prosecute his appeal (M.A.C.A. No.690 of 2014) on merits before the High Court after remand of the case by this

Court wherein the High Court will examine the question as to whether any case for further enhancement in the quantum of compensation awarded by the Tribunal is made out or not and, if so, on what grounds.

39) In view of the foregoing discussion, we remand only the appellant-claimant's appeal (M.A.C.A. No.690 of 2014) to the High Court for deciding the question as to whether any case is made out for further enhancement from Rs.24,62,065/- awarded by the Tribunal and, if so, on what grounds. Needless to say, the Insurance Company will have a right to oppose the appellant-claimant's appeal on the merits.

40) However, we make it clear that we have not applied our mind to the merits of the issues involved in the case having formed an opinion to remand the case to the High Court and hence the

High Court would decide M.A.C.A. No.690/2014 strictly in accordance with law on merits uninfluenced by any of our observations. We request the High Court to decide the appeal preferably within six months.

41) The appeals thus succeed and are accordingly allowed in part. The impugned orders are set aside. No costs.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[S. ABDUL NAZEER]

New Delhi,
September 20, 2018.