United India Insurance Co. Ltd vs Rajendra Singh & Ors on 14 March, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1165, 2000 (3) SCC 581, 2000 AIR SCW 835, 2000 ALL. L. J. 849, 2000 (2) LRI 12, (2000) 2 ACJ 1032, (2000) 3 KER LT 11, 2000 (4) SRJ 126, (2000) 3 JT 151 (SC), 2000 (1) UJ (SC) 655, (2000) 3 LANDLR 89, (2001) 1 ANDHWR 119, (2001) 42 ALL LR 451, (2000) 1 ACC 484, (2000) 2 ICC 192, (2000) 2 PUN LR 455, (2001) 1 SCJ 97, (2000) 2 RECCIVR 483, (2000) 2 TAC 613, (2000) 37 CORLA 405, (2000) 2 MAD LJ 181, (2000) 2 CURCC 12, (2000) 2 SUPREME 294, (2000) 2 BLJ 854, 2000 SCC (CRI) 726, (2000) 3 CIVLJ 647, (2000) 2 ALL WC 1349, (2000) 100 COMCAS 705, (2000) 3 ANDHLD 60, (2000) 2 SCALE 343, (2000) ILR (KANT) 1929

Author: K.T. Thomas

Bench: K.T. Thomas

CASE NO.:
Special Leave Petition (civil) 8479 of 1999

PETITIONER:
UNITED INDIA INSURANCE CO. LTD.

Vs.

RESPONDENT:
RAJENDRA SINGH & ORS,

DATE OF JUDGMENT: 14/03/2000

BENCH:
K.T. THOMAS & nD.P. MOHAPATRA

JUDGMENT:

THOMAS,J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J If what the appellant-Insurance Company now says is true, then a rank fraud had been played by two claimants and wangled two separate Awards from a Motor Accident Claims Tribunal for a bulk sum. But neither the Tribunal nor the High Court of Allahabad , before which the Insurance Company approached for annulling the awards, opened the door but expressed helplessness even to look into the matter and hence the Insurance Company has filed these appeals by Special leave.

Fraud and justice never dwell together.(Frans et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything((Lazarus Estate Ltd. Vs. Beasley 1956(1) QB 702.) For a High Court in India to say that it has no power even to consider the contention that the awards secured are the byproducts of stark fraud played on a Tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and peoples faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the plea and found them unsustainable on merits,if they are meritless. But when the Courts pre- empted the Insurance Company by slamming the doors against them, this Court has to step in and salvage the situation. Facts are these: One Rajendra Singh and his son Sanjay Singh (first respondent in the respective appeals) filed two separate claim petitions before the Motor Accident Claims Tribunal, Bulandsahar (for short the Tribunal) in 1994 praying for awarding compensation in respect of an accident which happened on 9.11.1993. The claimants put forth-identical averments regarding the accident which are in substance the following:

> Rajendra Singh, the father was travelling on the pillion of a two wheeler motorcycle which was then ridden by his son Sanjay Singh and an Ambassador Car (DL 2C-9793) driven by Jai Prakash collided with the motorcycle of the claimants and caused injuries to both of them. The ambassador car was owned by the second respondent.
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> Rajendera Singh made a claim for more than Rs. 4 lacs and Sanjay Singhs claim was even above that (Rs.5.5 lacs). As the ambassador car was, at the relevant time, covered by a policy of Insurance with the appellant Company, the claimants made the appellnat Company also a party in the claim proceedings before the Tribunal. Though the owner of the Car as well as the Insurance Company resisted the claims on the premise that there was no negligence on the part of the driver of the Car, the Tribunal found the driver guilty of negligent driving. Hence, the owner was held vicariously liable for the damages payable to the injured claimants.Accordingly, two awards were passed on 15.1.1998, one in favour of Rajendra Singh in a sum of Rs.3,55,000/- and the other in favour of Sanjay Singh in a sum of Rs. 1,52,000/-. Both the awards were to carry interest at the rate of 12% per annum from the date of claim. An interim order was passed already for covering no fault liability and we are told that the amount towards that had been paid by the appellant Company.
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> The awards became final as neither the owner of the ambassador car nor the Insurance Company filed any appeal thereon. Thus far, there was no problem for the

awardees. Hardly four months elapsed after passing the awards, a gentleman visited the Divisional Office of the appellant Company at Gaziabad and delivered the photocopy of a report prepared by the Assistant Sub-Inspector of Police, subzi Mandi, Police Station, Delhi on 9.11.1993 in which contained a narration that Sanjay Singh and Rajendra Singh received the injuries in a different circumstance at a different place altogether (i.e. while they were operating their own tractor, it jutted into a ditch and in the jerk the occupants of the tractor slipped down and sustained injuries). The gentleman who delivered the said report to the company was prepared to disclose further details of the above accident only on a condition that his identity would be kept in anonymity.

On receipt of the said information, the Divisional Office of the appellant Company made frenetic inquiries and they came across statements attributed to the claimants and prepared by the Sub-Inspector of Police, Subzi Mandi Police Station, Delhi, on 9.11.1993. Such statements contained the narration that the injuries were sustained by Rajendra Singh and Sanjay Singh in the accident which happened when the trailor trolly had slipped into the pit.

Almost immediately after obtaining the above information, the appellant Insurance Company moved the Tribunal with two petitions purportly under Section 151,152 and 153 of the Code of Civil Procedure in which the appellant prayed for recall of the awards dated 15.1.1998 on the revelation of new facts regarding the injuries sustained by the claimants. Those applications were resisted by the claimants solely on the ground that the Tribunal has no power of review except to correct any error in calculating the amount of compensation and hence the Tribunal cannot recall the awards. It appears that the Tribunal accepted the said stand of the claimants and dismissed the application for recalling the awards. It was in the above background that the appellant Insurance Company moved the High Court of Allahabad with a Writ petition for quashing the awards as well as the steps taken pursuant thereto.

Learned Single Judge of the Allahabad High Court who dismissed the Writ petition as per a short order passed by him stated thus:

Heard learned counsel for the petitioner. The present Writ petition has been filed against the order rejecting review application. There is no power of review in the Statute. Learned Counsel for the petitioner argues that fraud has been played. It is a question of fact, for which writ jurisdiction is not the proper forum. The petitioner may avail himself of such legal remedy as may be available to him. The writ petition is accordingly dismissed. There will be, however, no order as to costs.

(underlining supplied) Thus the Tribunal refused to open the door to the appellant Company as the High Court declined to exercise its writ jurisdiction which is almost plenary for which no statutory constrictions could possibly be imposed. If a party complaining of fraud having been practised on him as well as on the court by another

party resulting in a decree, cannot avail himself of the remedy of review or even the writ jurisdiction of the High Court, what else is the alternative remedy for him? Is he to surrender to the product of the fraud and thereby became a conduit to enrich the imposter unjustly? Learned Single Judge who indicated some other alternative remedy did not unfortunately spell out what is the other remedy which the appellant Insurance Company could pursue with.

No one can possibly fault the Insurance Company for persistently pursuing the matter up to this court because they are dealing with public money. If they have discovered that such public fund, in a whopping measure, would be knocked off fraudulently through a fake claim, there is full justification for the Insurance Company in approaching the Tribunal itself first. At any rate the High Court ought not have refused to consider their grievances. What is the legal remedy when a party to a judgment or order of court later discovered that it was obtained by fraud?

In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagnnath (dead) by Lrs. & ors. {1994 (1) SCC 1} the two Judges Bench of this Court held:

Fraud avoids all judicial acts, ecclesiastical or temporal- observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree- by the first court or by the highest court-has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings In Indian Bank Vs. Satyam fibres (India) Pvt. Ltd. {1996 (5) SCC 550} another two Judges bench, after making reference to a number of earlier decisions rendered by different High Courts in India, stated the legal position thus:

Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.

It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice.

In the result, we allow these appeals, set aside the impugned orders and quash the awards passed by the Tribunal in favour of the claimants. We direct the Tribunal to consider the claims put forth by the claimants afresh after affording a reasonable opportunity to the appellant Insurance Company to substantiate their allegations. Opportunity must be afforded to the claimants also to rebut the allegations.

We make it clear that while disposing of the claims afresh the Tribunal shall not be trammeled by any of the observations, if any, made by us on the merits of the allegations.