SUPREME COURT OF INDIA

United India Insurance Co. Ltd.

Vs.

Jyotsnaben S. Patel

C.A.No.6295 of 2003

(K. G. Balakrishnan and P. Venkatarama Reddi JJ.)

11.08.2003

JUDGEMENT

K. G. Balakrishnan, J.

1. Leave granted.

2. Aggrieved by the order passed by the Division Bench of the Gujarat High Court, the United India Insurance Company has come up in appeal by way of special leave. The appellant was the third respondent in a motor accident claim preferred by respondents 1 to 3 herein, who are legal heirs of one Sudhirbhai Jayrambhai Patel who died in a motor accident on 27-8-1994. Respondents 1 to 3 claimed a total compensation of Rs. 80 lacs and the Motor Accident Claims Tribunal (Special), Vadodra, passed an award for Rs. 32,50,000/- with interest at the rate of 12% per annum from the date of application till realisation. From the impugned judgment of the Tribunal dated 15-5-1999, it appears that the first respondent, the driver of the offending vehicle and the second respondent, the owner of the vehicle appeared before the Tribunal, but did not file any written statement refuting the allegations made in the petition. The Tribunal has stated that these respondents did not step into the witness box to explain the circumstances and the manner in which the actual mishap took place. It was further stated that in view of that, the Tribunal was compelled to draw an adverse inference against them. These observations have been made in paragraph 18 of the judgment of the Tribunal.

3. Before the Tribunal, the appellant Insurance Company filed a petition under Section 170 of the *Motor Vehicles Act, 1988* (hereinafter referred to as 'the Act') praying that the appellant herein be allowed to contest the proceedings. That application was granted by the Tribunal by a cryptic order; "Granted as prayed for". After the award was passed by the Tribunal, the appellant filed an appeal before the Gujarat High Court impleading the legal heirs of the deceased and also the driver and owner of the offending vehicle as respondents. When the appeal came up for consideration, the Division Bench was of the view that in view of Section 149(2) of the Act, the appeal under Section 179 was not maintainable, especially in view of the observations made by this Court in *Shankarayya v. United India Insurance Co.*

Ltd.[1] and the appeal preferred by the appellant was dismissed. Aggrieved by the same, the present appeal is filed by the United India Insurance Company Limited.

4. We heard the appellant's counsel and also counsel for the respondents.

5. The short question that arises for consideration is whether the appeal preferred by the appellant before the High Court was maintainable or whether it was barred by the provisions of the Motor Vehicles Act. It is now a settled position that an insurer can contest the proceedings before the Motor Accident Claims Tribunal only on any of the grounds prescribed under Section 149(2) of the Act and unless a specific order is passed by the Tribunal under Section 170, the insurer cannot contest the claim on grounds other than the grounds mentioned in sub-section (2) of Section 149 of the Act. It is relevant to extract Sections 149 and 170 of the Motor Vehicles Act. Sub-section (2) of Section 149 of the *Motor Vehicles Act, 1988* reads as under:

> "(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 an 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:-
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> (a) that there has been a breach of specified condition of the policy, being one of the following conditions, namely:-
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> (i) a condition excluding the use of the vehicle-
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> (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
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> (b) for organised racing and speed testing, or
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> (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or
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> (d) without side-car being attached where the vehicle is a motor cycle; or
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> (ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
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> (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."

6. Section 170 of the Motor Vehicles Act reads as under:

"170. Impleading insurer in certain cases.- Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim, it may for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

7. This Court in Shankarayya's case (supra) held that the Insurance Company when impleaded as a party by the Tribunal can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in S. 170 are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal which should be a reasoned order by the Tribunal and unless that procedure is followed the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence.

8. In a series of other decisions too, the same view was taken. In *Rita Devi (Smt.) and others v. New India Assurance Co. Ltd. and another*[2] this Court held that if the Insurance Company had not obtained leave from the Tribunal before filing the appeal, the appeal preferred by the Insurance Company before the High Court would not be maintainable in law.

9. In *Chinnama George and others v. N. K. Raju and another*[3], it was held that the insurer can defend the proceedings before the Claims Tribunal only on certain limited grounds mentioned in S. 149(2) of the Act and if these grounds are not available to the insurer, then a joint appeal by the owner of the motor vehicle and the Insurance Company may not be of any avail and the Insurance Company is legally bound to satisfy the award and it cannot be termed as 'a person aggrieved by the award' and, therefore, the insurer would be barred from filing an appeal against the award of the Tribunal.

10. *H. S. Ahammed Hussain and another v. Irfan Ahammed and another*[4] was a case where the insurer and the insured jointly filed an appeal. This Court held that even though the appeal filed by the insurer was not maintainable, the appeal need not be dismissed and the insured may proceed with the appeal. This Court stated as under:-

> "Thus, the decision of this Court in the case of Chinnama George can be of no avail to the appellant and we do not find any merit in the submission that joint appeal by the insurer as well as the insured was not maintainable. In such an eventuality, the course which a Court should adopt is as noticed in the case of Narendra Kumar to delete the name of the insurer from the cause title and proceed with the appeal of the insured and decide the same on merit."

11. The lone dissenting view was expressed by this Court in *United India Insurance Co. Ltd. v. Bhushan Sachdeva and others*[5]. There, it was held that it is open to the Insurance Company to invoke the right under S. 173 of the Act and maintain an appeal against the award made by the Tribunal. It was held that the insurer shall be treated as a person aggrieved by the award as the amount of compensation is to be paid by the insurance company. The Court also went on to observe that failure to file an appeal by the insurer would amount to 'failed to contest' and, therefore, the insurer can maintain an appeal under S. 173 of the Act.

12. The view taken in the above decision was not accepted by a three-Judge Bench of this Court in *National Insurance Co. Ltd., Chandigarh v. Nicolletta Rohtagi and others*[6] which considered the question elaborately and held that the right of appeal is not an inherent right and as the Insurance Company is permitted to contest only on the grounds stated in S. 149(2) of the Motor Vehicles Act, the insurer cannot file an appeal on any other ground, except in accordance with the procedure prescribed under S. 170 of the Act. In that case, this Court observed as follows:

> "The aforesaid provisions show two aspects. Firstly, that the insurer has only statutory defences available as provided in sub-section (2) of S. 149 of the 1988 Act and secondly, where the Tribunal is of the view that there is a collusion between the claimant and the insured, or the insured does not contest the claim, the insurer can be made a party and on such impleadment the insurer shall have all defences available to it. Then comes the provision of S.-173 which provides for an appeal against the award given by the Tribunal. Under S. 173, any person aggrieved by an award is entitled to prefer an appeal to the High Court. Very often the question has arisen as to whether an insurer is entitled to file an appeal on the grounds available to the insured when either there is a collusion between the claimants and the insured or when the insured has not filed an appeal before the High Court questioning the quantum of compensation. The consistent view of this Court had been that the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of offending vehicle."

13. In view of the aforesaid decisions on the point and on a consideration of the relevant provisions under the Motor Vehicles Act, it is plain and clear that the Insurance Company can contest the claim preferred before the Tribunal only on the statutory grounds prescribed under S. 149(2) of the Act, but, if there is collusion between the person making the claim and the person resisting the claim or if the person against whom the claim is made has failed to

contest the claim, the Insurance Company can step in and seek permission of the Tribunal and make a prayer for getting itself impleaded as a party to the proceeding and the insurer so impleaded can then contest the proceeding on grounds other than the grounds enumerated in sub-section (2) of S. 149 of the Act. This is an enabling provision in the event of a collusion between the claimant and the insured or the tortfeaser.

14. In the instant case, the Insurance Company was impleaded as third respondent. The driver and owner of the vehicle, though appeared before the Tribunal, did not contest the proceedings. They did not file the written statement nor did they choose to give evidence before the Tribunal. Admittedly, the appellant filed an application under S. 170 of the Act seeking permission of the Tribunal to contest the proceedings giving the necessary details. The award passed by the Tribunal also evidently shows that pursuant to this permission, the counsel for the appellant-Insurance Company cross-examined the witnesses produced by the claimant to prove the negligence of the offending vehicle. Unfortunately, however, the Tribunal, while passing its orders on the petition filed under S. 170 of the Act only stated that the prayer was granted, though the mandate of S. 170(b) of the Motor Vehicles Act states that the Tribunal while passing an order shall record its reasons. This Court in Shankarayya's case (supra) had emphasised this aspect. But it is very much evident in this case that the driver and the owner of the motor vehicle did not file the written statement and failed to contest the proceedings. The Tribunal could have merely recorded that fact while allowing the application. In a situation contemplated by Cl. (b) of S. 170, nothing more was required than recording that indisputable fact. For failure to do so, the appellant shall not suffer prejudice. Therefore, the appellant-Insurance Company was justified in contesting the proceedings on the grounds other than those enumerated under sub-section (2) of S. 149 of the Act, pursuant to the permission granted by Court. For the same reason, the Insurance Company can be legitimately considered to be 'person aggrieved' within the meaning of S. 173 of the Act.

15. Having regard to the above facts, we are constrained to hold that the High Court should not have dismissed the appeal on the sole ground that the appellant had not obtained reasoned order permitting it to contest under S.-170 of the Act. In the result, we allow this appeal, set aside the judgment and order passed by the Division Bench of the High Court and remand the matter to the High Court. We request the High Court to hear and dispose of the appeal on merits in accordance with law.

16. There will be no order as to costs.

Appeal allowed.

[1]*AIR 1998 SC 2968*
[2]*(2000) 5 SCC 113*
[3]*(2000) 4 SCC 130*
[4]*(2000) 6 SCC 52*
[5]*(2002) 2 SCC 265*
[6]*(2002) 7 SCC 456*