SUPREME COURT OF INDIA

United India Insurance Company

Vs.

Serjerao

C.A.No.5201 of 2007

(Arijit Pasayat and P.Sathasivam JJ.)

14.11.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by a learned Single Judge of the Bombay High Court, Aurangabad Bench dismissing the writ petitions filed by the appellant (described hereinafter as `the Insurance Company'). The controversy lies within a very narrow compass.

3. The respondents were travelling in the Trolly attached to a Tractor as labourers. They claimed to have suffered injuries because the Tractor with the Trolly in each case met with an accident. Petitions claiming compensation under the Motor Vehicles Act, 1988 (in short `the Act') were filed along with application under Section 140 of the Act. Order was passed by the learned Additional District Judge and Ex-officio Member, Motor Accident Claims Tribunal, Latur (in short `the MACT') on the principle of no fault liability. The Insurance Company took the stand that it had no liability in respect of the persons travelling in the Trolly and the owner of the Tractor is liable to pay compensation. This plea was rejected by the MACT. Appeal in terms of Section 173 of the Act in each case was preferred before the High Court. Learned Single Judge, prima-facie, was of the view that the appeal was not maintainable. Nevertheless, he referred the matter to the Division Bench, which, it appears referred it to a Full Bench. While the matter was pending consideration by the Full Bench, execution proceedings were filed. Therefore, writ petitions were filed before the High Court. The High Court, by the impugned order in each case, dismissed the writ petitions holding that though arguable questions were involved, the writ petitions did not deserve consideration.

4. In support of the appeals, learned counsel for the appellant-Insurance Company submitted that the appeals in terms of Section 173 of the Act were maintainable and in any event, the Insurance Company has no liability in respect of the persons travelling in trollies attached to the Tractors.

5. There is no appearance on behalf of the respondents when the matter was called.

6. So far as the question of maintainability aspect is concerned, the issue is concluded by a judgment of this Court in Smt. Yallwwa & Ors. Vs. National Insurance Co. Ltd. and Anr. (2007 (8) SCALE 77).

7. In paragraphs 16 to 19 of the judgment, it was observed as follows:

16. The question which is required to be considered is what would be the meaning of the term award when such a contention is raised. Although in a given situation having regard to the liability of the owner of the vehicle, a claim Tribunal need not go into the question as to whether the owner of the vehicle in question was at fault or not, but determination of the liability of the insurance company, in our opinion, stands on a different footing. When a statutory liability has been imposed upon the owner, in our opinion, the same cannot extend the liability of an insurer to indemnify the owner, although in terms of the insurance policy or under the Act, it would not be liable therefor.

17. In a given case, the statutory liability of an insurance company, therefore, either may be nil or a sum lower than the amount specified under Section 140 of the Act. Thus, when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which event, it goes without saying, it would be open to the insurance company to plead and prove that it is not liable at all.

18. Furthermore, it is not in dispute that there can be more than one award particularly when a sum paid may have to be adjusted from the final award. Keeping in view the provisions of Section 168 of the Act, there cannot be any doubt whatsoever that an award for enforcing the right under Section 140 of the Act is also required to be passed under Section 168 only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. A Claims Tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been substantiated, which is the basis for making an award.

19. Furthermore, evidently, the amount directed to be paid even in terms of Chapter-X of the Act must as of necessity, in the event of non- compliance of directions has to be recovered in terms of Section 174 of the Act. There is no other provision in the Act which takes care of such a situation. We, therefore, are of the opinion that even when objections are raised by the insurance company in regard to its liability, the Tribunal is required to render a decision upon the issue, which would attain finality and, thus, the same would be an award within the meaning of Section 173 of the Act.

8. So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in Oriental Insurance Company Ltd. Vs. Brij Mohan and Ors. (2007 (7) SCALE 753) and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated by this Court in Smt. Yallwwas case (supra) and Brij Mohans case (supra).

9. The appeals are accordingly disposed of with no order as to costs.