SUPREME COURT OF INDIA

V. Subbulakshmi

Vs.

S. Lakshmi

C.A.No.990 of 2008

(S.B. Sinha and Harjit Singh Bedi JJ.)

05.02.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. First respondent is the owner of a bus. Allegedly, owing to rash and negligent driving by the driver of the said vehicle, an accident took place wherein one Vadivelu, the predecessor in interest of the appellants died.

3. An application under Section 166 of the Act claiming compensation for a sum of Rs.25 lakhs was filed by the appellants in the Court of Motor Accidents Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate, Karur). A written statement was filed by the Insurance Company in the said proceedings. The same was adopted by the owner of the vehicle. Before the Tribunal, the appellants produced some documents to show that the income of the deceased was about 12,500/- per month. He is said to have been deriving income both as an agriculturist as also from his business as commission agent in the business of coconut.

4. The Tribunal, inter alia, keeping in view the fact that the Income Tax Returns were filed only after the death of the said Vadivellu, estimated at Rs. 9,600/- per month. The High Court, however, estimated the income of the deceased to be around a sum of Rs. 4,000/- per month, from his agricultural operation and Rs. 3,000/- from his commission business, totaling a sum of Rs. 7,000/- per month and upon deducting 1/3rd thereof from the amount towards his personal expenses, the High Court held that his contribution to his family would come to about of Rs. 4,667/- per month. Applying the multiplier of 18, the loss of income was assessed at Rs. 10,08,072/-, instead and in place of Rs. 13,82,400/- as was found by the Tribunal.

5. Appellant is, thus, before us. Despite service of notice, the first respondent has not appeared.

6. Mr. V. Krishnamurthy, the learned senior counsel appearing on behalf of the appellant, inter alia, would submit that a joint appeal by the owner of the vehicle and the Insurance Company was not maintainable. It was furthermore urged that the High Court without analyzing the evidence on records has arbitrarily reduced the amount of income of the deceased from Rs. 9,600/- as was found by the learned Tribunal, to a sum of Rs. 7,000/- per month.

7. Mr. Ashok Kumar Sharma, the learned counsel appearing on behalf of the second respondent, on the other hand, submitted that the appeal before the High Court in terms of Section 173 of the Act was maintainable. According to the learned counsel keeping in view the phraseology used in Section 173 of the Act, an appeal subject to the limitation provided under sub-Section (2) thereof would be maintainable against each and every award and, thus, if an appeal is maintainable at the instance of the Insurance Company, it matters little as to whether it was filed with the owner of the vehicle or not. The learned counsel furthermore urged that the Tribunal has failed to take into consideration the fact that the documents filed by the claimants/appellants purporting to establish the quantum of income of the deceased being wholly unreliable, the same could not have been taken into consideration for the purpose of computation of income.

8. We may at the outset notice that the High Court was although of the opinion that no appeal would be maintainable at the instance of an insurance company unless permission of the court was obtained by it in terms of Section 170 Act, observed that the owner of the vehicle being an appellant, the appeal would be maintainable at his instance.

9. The relevant statutory provisions, being Sections 149(2), 170 and 173 may be noticed by us, which are as under:

> "149. (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 of 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. 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 organized 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

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

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

(iii) That the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

Section 170 - Imp leading insurer in certain cases where in the course of any inquiry, the Claims Tribunal is satisfied that

(iv) There is collusion between the person making the claim and the person against whom the claim is made, or 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 imp leaded as a party to the proceeding and the insurer so imp leaded 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. Section 173 Appeals--(1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court. Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent, of the amount so awarded, whichever is less, in the manner directed by the High Court. Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

10. The maintainability of an appeal by the Insurance Company together with the owner of the vehicle came up for consideration before this *Court in Narendra Kumar and Another Vs.*

Yarenissa and Others[1] wherein it was clearly held that an appeal by the owner of the vehicle is maintainable despite the fact that in terms of an Award, he is to be reimbursed by the insurance company, stating;

> "If the award has gone against the tortfeasors it is difficult to accept the contention that the tortfeasor is not "an aggrieved person" as has been held by some of the High *Courts vide Kantilal & Bros . v. Ramarani Debi, New India Assurance Co. Ltd . v. Shakuntla Bai, Nahar Singh v. Manohar Kumar, Radha Kishan Sachdeva v. Flt. Lt. L.D. Sharma* merely because under the scheme of Section 96 if a decree or award has been made against the tortfeasors the insurer is liable to answer judgment "as if a judgment-debtor". That does not snatch away the right of the tortfeasors who are jointly and severally liable to answer judgment from preferring an appeal under Section 110-D of the Act. If for some reason or the other the claimants desire to execute the award against the tortfeasors because they are not in a position to recover the money from the in surer the law does not preclude them from doing so and, therefore, so long as the award or decree makes them liable to pay the amount of compensation they are aggrieved persons within the meaning of Section 110-D and would be entitled to prefer an appeal. But merely because a joint appeal is preferred and it is found that one of the appellants, namely, the insurer was not competent to prefer an appeal, we fail to see why the appeal by the tortfeasor, the owner of the vehicle, cannot be proceeded with after dismissing or rejecting the appeal of the insurer. To take a view that the owner is not an aggrieved party because the Insurance Company is liable in law to answer judgment would lead to an anomalous situation in that no appeal would lie by the tortfeasors against any award because the same logic applies in the case of a driver of the vehicle. The question can be decided a little differently. Can a claim application be filed against the Insurance Company alone if the tortfeasors are not the aggrieved parties under Section 110-D of the Act? The answer would obviously be in the negative. If that is so, they are persons against whom the claim application must be preferred and an award sought for otherwise the insurer would not be put to notice and would not be liable to answer judgment as if a judgment-debtor. Therefore, on first principle it would appear that the contention that the owner of a vehicle is not an aggrieved party is unsustainable."

11. It was furthermore held;

> "For the reasons stated above, we are of the opinion that even in the case of a joint appeal by insurer and owner of offending vehicle if an award has been made against the tortfeasors as well as the insurer even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeasor can proceed with the appeal after the cause-title is suitably amended by deleting the name of the insurer."

12. However, another *Bench of this Court in Chinnama George and Others Vs. N.K. Raju and Another*[2] opined:

"Admittedly, none of the grounds as given in Sub-section (2) of Section 149 exist for the insurer to defend the claims petition. That being so, no right existed in the insurer to file appeal against the award of the Claims Tribunal. However, by adding N.K. Raju, the owner as co-appellant, an appeal was filed in the High Court which led to the impugned judgment. None of the grounds on which insurer could defend the claims petition was the subject matter of the appeal as far as the insurer is concerned. We have already noticed above that we have not been able to figure out from the impugned judgment as to how the owner felt aggrieved by the award of the Claims Tribunal. The impugned judgment does not reflect any grievance of the owner or even that of the driver of the offending bus against the award of the Claims Tribunal. The insurer by associating the owner or the driver in the appeal when the owner or the driver is not an aggrieved person cannot be allowed to mock at the law which prohibit the insurer from filing any appeal except on the limited grounds on which it could defend the claims petition. We cannot put our stamp of approval as to the validity of the appeal by the insurer merely by associating the insured. Provision of law cannot be undermined in this way. We have to give effect to the real purpose to the provision of law relating to the award of compensation in respect of the accident arising out of the use of the motor vehicles and cannot permit the insurer to give him right to defend or appeal on grounds not permitted by law by a backdoor method. Any other interpretation will produce unjust results and open gates for the insurer to challenge any award. We have to adopt purposive approach which would not defeat the broad purpose of the Act. Court has to give effect to true object of the Act by adopting purposive approach. 7. Sections 146, 147, 149 and 173 are in the scheme of the Act and when together mean read: (1) it is legally obligatory to insure the motor vehicle against third party risk. Driving an uninsured vehicle is an offence punishable with an imprisonment extending up to three months or the Policy of insurance must comply with the requirements as contained in Section 147 of the Act; (3) It is obligatory for the insurer to satisfy the judgments and awards against the person insured in respect of third party risks. These are Sub-sections (1) and (7) of Section 149. Grounds on which insurer can avoid his liability are given in Sub-section (2) of Section 149.8. 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 insurer will be barred from filing any appeal against the award of the Claims Tribunal."

13. In Chinnamma George, the owner did not challenge the findings of the Tribunal that the bus was being driven by the driver in a rash and negligent manner. It was therefore, held that the owner was not an aggrieved person to maintain an appeal. It was in the aforementioned context this Court observed that none of the grounds as laid down under sub-Section (2) of Section 149 of the Act having been satisfied, an appeal by the Insurance Company was not maintainable, observing that an insurer having a limited area to defend the claim petition, it cannot circumvent the same by associating itself with the owner/driver in an appeal when the owner/driver is not an aggrieved person and, thus, cannot be allowed to mock at the law.

14. In the instant case, the owner of the bus was an aggrieved person. He could maintain an appeal of his own. Section 173 of the Act confers a right on any aggrieved person to prefer an appeal from an award.

15. In the present case, it is not necessary for us to go into the larger question as to whether having regard to the bar contained in sub-Section (2) of Section 149 of the Act, the second respondent could have preferred an appeal questioning the quantum of compensation, as the High Court held that the appeal, even after deletion of the second respondent from the array of the parties, the appeal preferred by the first respondent was maintainable.

16. We may only notice that the aforementioned two decisions although have been referred to by a three Judge Bench of this *Court in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*[3] it was not specifically held even therein that a joint appeal by the owner and the insurer would not be maintainable.

17. However, in this case, the appeal preferred by the Insurance Company has been dismissed. The High Court has only entertained the appeal of the owner.

18. So far as the question in regard to the quantum of compensation awarded in favor of the appellants is concerned, we are of the opinion that the High Court has taken into consideration all the relevant evidences brought on record. The accident took place on 7.5.1997. Income tax returns were filed on 23.6.1997. The Income Tax Returns (Exp. P-14), therefore, have rightly not been relied upon.Ex.P-8 is a deed of lease. It was an unregistered document. Although the document was purported to have been executed on 10.4.1993, the genuineness thereof was open to question. The stamp paper was purchased in the year 1983 but an interpolation was made therein to show that it was purchased in 1993. The purported receipts granted by the tenant were also unstamped.

19. In the aforementioned fact situation, the High Court has not relied upon all the aforementioned documents, filed by the appellant. It may be true that there was no basis for the High Court to arrive at the conclusion that the income of the deceased was Rs.4,000/- from agricultural operation and Rs. 3,000/- from his commission business, but no reliable document having been produced to show that the deceased was earning an income of Rs.12,500/- per month, as claimed. The High Court, in our opinion, cannot be held to have, thus, committed any grave error in this behalf. There is no dispute as regards application of the multiplier. In a case of this nature, some guess work is inevitable. This Court could have gone into the question provided there was some materials had been brought on record by the appellants upon which reliance could be placed. There being no such material available on record, we are not in a position to interfere with the impugned judgment of the High Court.

20. We, therefore, are of the opinion that it is not a fit case where this Court should interfere with the judgment of the High Court. Appeal is dismissed. No costs.

Cases Referred

[1]*(1998) 9 SCC 0202*
[2]*(2000) 4 SCC 0130*
[3]*(2002) 7 SCC 0456*