

SUPREME COURT OF INDIA

Oriental Insurance Co. Ltd.

Vs.

Kalawati Devi

C.A.No. 1824 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ)

24.03.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this Appeal is to the order passed by a Division Bench of the Utrakhand High Court in M.A. No.184 of 2002 dismissing the appeal filed by the appellant (hereinafter referred to as the `insurer'). The High Court dismissed the appeal primarily on the ground that in the proceedings under Section 166 of the *Motor Vehicles Act, 1988* (in short the `Act') when the owner of the vehicle did not take interest after filing written statement, the insurer could have obtained leave to contest as required under Section 170 of the Act and establish that the Sheikh Akhtar, who was the driver responsible for the accident in question, had no valid licence. But no such leave to contest was obtained. Accordingly, appeal was dismissed. An application was filed before the High Court contending that the conclusion that the insurer had not obtained leave to contest was not factually correct. In fact the leave to contest the claim was granted by the MACT on 25.4.2001. The High Court rejected the application for review primarily on the ground that the scope of review was very limited under Order 47 Rule 1 of the *Code of Civil Procedure, 1908* (in short the `CPC') and this was not a case of the nature where action in terms of Order 47 Rule 1, CPC could be taken.

3. Learned counsel for the appellant submitted that since the High Court at the first instance proceeded on erroneous factual premises, it should have recalled the earlier order and heard the matter afresh.

4. Respondents supported the orders of the High Court.

5. Undisputedly the leave to contest the claim was granted to the insurer on 25.4.2001. Those aspects appear to have been overlooked by the High Court when the original order dated 14.11.2003 was passed. That being so, we set aside the impugned orders dated 14.11.2003 in MA No.184 of 2002 and dated 5.7.2006 in Civil Review No.37 of 2004 stand quashed. Since

the matter is pending since long we request the High Court to dispose of the matter as early as practicable, preferably within two months from the date of receipt of this order.

6. The Appeal is allowed.