

**SUPREME COURT OF INDIA**

Bimlesh

Vs.

New India Assurance Co.Ltd.

C.A.No.2164 of 2004

(Aftab Alam and R.M. Lodha JJ.)

03.08.2010

**JUDGEMENT**

**R.M.Lodha, J.**

1. The claimants are in appeal by special leave aggrieved by the judgment and order dated October 1, 2002 of the High Court for the States of Punjab and Haryana at Chandigarh. The High Court by the said order, set aside the order dated August 7, 2001 of the Motor Accident Claims Tribunal, Gurgaon, (for short, 'the Claims Tribunal') and held that claim petition filed by the claimants under Section 163- A of the Motor Vehicles Act, 1988 (for short, 'Act, 1988') was not maintainable against the respondent-New India Assurance Company Ltd. (for short, 'the Insurance Company').

2. Siri Bhagwan was the registered owner of a Jeep bearing No. HR-26-G-0179 which was being used as a Maxicab. The said vehicle was insured with the Insurance Company for the period from August 30, 1999 to August 29, 2000. He himself used to drive that vehicle. An accident occurred on August 15, 2000; Siri Bhagwan while driving the said vehicle on Rewari-Pataudi Road, to save a dog, hit a tree and died. His wife and children--the appellants herein filed a claim petition under Section 163-A of the Act, 1988 before the Claims Tribunal against the Insurance Company claiming compensation in the sum of Rs. 10 lakhs. The Insurance Company filed the written statement and a plea was raised that the claim petition was not competent because the deceased was not a third party being the driver and owner of the vehicle and under the Act, 1988 and terms of the policy of the insurance, the Insurance Company is only required to indemnify the owner in case of third party loss.

3. The Claims Tribunal heard the parties on the question of maintainability of the claim petition and by its order dated August 7, 2001 held that the claim petition was maintainable.

4. Being not satisfied with the order dated August 7, 2001 passed by the Claims Tribunal, the Insurance Company preferred revision petition before the High Court.

“The High Court set aside the order of the Claims Tribunal and held that claim petition was not maintainable.”

5. The case of the claimants appears to be that additional premium was paid by the insured to cover the risk of the driver of the vehicle and in the policy issued by the Insurance Company, in para 5, persons or classes of persons entitled to drive includes the insured and accordingly the Insurance Company is liable. On the other hand, the Insurance Company has denied its liability principally on the ground that deceased being owner of the vehicle is not a 'third party'. Section 166 of the Act, 1988 provides that an application for compensation arising out of an accident of the nature specified in Section 165(1) may be made, inter alia, by all or any of the legal representatives of the deceased where death has resulted from the accident.

“Section 169 makes a provision that the Claims Tribunal shall follow the summary procedure subject to any rules that may be made in this behalf. The Code of Civil Procedure, 1908 is not applicable to the proceedings before the Claims Tribunal except to the extent provided in sub-section (2) of Section 169 and the rules. The whole object of summary procedure is to ensure that claim application is heard and decided by the Claims Tribunal expeditiously. The inquiry under Section 168 and the summary procedure that the Claims Tribunal has to follow do not contemplate the controversy arising out of claim application being decided in piecemeal. The Claims Tribunal is required to dispose of all issues one way or the other in one go while deciding the claim application. The objection raised by the Insurance Company about maintainability of claim petition is intricately connected with its liability which in the facts and circumstances of the case is dependent on determination of the effect of the additional premium paid by the insured to cover the risk of the driver and other terms of the policy including terms of the policy contained in para 5. Since all issues (points for determination) are required to be considered by the Claims Tribunal together in light of the evidence that may be let in by the parties and not in piecemeal, we do not think it proper to consider the rival contentions on merits at this stage.

Suffice it to say that matter needs to be sent back to the Claims Tribunal.”

6. The appeal is partly allowed. The order dated October 1, 2002 passed by the High Court as well as the order dated August 7, 2001 passed by the Motor Accident Claims Tribunal, Gurgaon are set aside. The claim petition shall be decided by the Claims Tribunal after hearing the parties in accordance with law, if not decided so far pursuant to the interim order dated March 29, 2004 passed by this Court. In case the inquiry has been concluded during the pendency of this appeal, the Claims Tribunal may make the award now. It will be open to the aggrieved party to challenge such award in a statutory appeal. No order as to costs.