SUPREME COURT OF INDIA

United India Insurance Co.Ltd.

Vs.

Shila Datta & Ors.

C.A.No.6026-6027 of 2007

(R.V.Raveendran,J., H.L.Dattu and K.S Radhakrishnan,JJ.,)

13.10.2011

JUDGMENT

R.V.Raveendran,J.,

1. A Two Judge Bench of this Court made the following order of reference in this case on 3.12.2007:

> "One of the contentions raised in these appeals is the correctness of a three-Judge Bench decision of this Court in National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and Ors., - 2002 (7) SCC 456, which is said to be pending consideration in a large number of cases before this Court. Assailing the correctness of the aforesaid decision Mr. Atul Nanda submits that therein the liability of the insurer to reimburse the insured on two premises, namely, (1) just compensation; and (2) whose liability would be to pay, as envisaged under sub-section (1) of section 149 vis-`- vis the right of the aggrieved persons (Which would include the insured) to prefer an appeal in terms of section 173 of the Motor Vehicles Act, had not been considered in the backdrop of the history in which sub-section (1) of section 149 was enacted. Apart from the question raised by Mr. Nanda, we are of the opinion that the matter may be considered from other angles, namely, whether the insurer shall be wholly without any remedy even if the amount of compensation is determined in violation of the standard formula envisaged under the second schedule of the Act or in clear violation of the ratio (s) laid down by this Court. We, therefore, are of the opinion that it is a fit case where the matter should be referred to larger Bench. We direct accordingly. Let the records of the case be placed before Hon'ble the Chief Justice of India for appropriate orders."

2. On the said reference made, the following questions arise for our consideration, in regard to the position of an Insurer, under the Motor Vehicles Act, 1988 (`Act' for short) :

"(i) Whether the insurer can contest a motor accident claim on merits, in particular, in regard to the quantum, in addition to the grounds mentioned in section 149(2) of the Act for avoiding liability under the policy of insurance?

(ii) Whether an insurer can prefer an appeal under section 173 of the Motor Vehicles Act, 1988, against an award of the Motor Accident Claims Tribunal, questioning the quantum of compensation awarded?"

3. The insurance companies have urged the following five points for our consideration, which are independent grounds in support of their contention that insurance companies are not barred from questioning the quantum of compensation either before the Motor Accidents Claims Tribunal or in appeals arising from the awards of the Tribunal :

"(i) There is a significant difference between insurer as a `noticee' (a person to whom a notice is served as required by section 149(2) of the Act) in a claim proceedings and an insurer as a party-respondent in a claim proceedings. Where an insurer is impleaded by the claimants as a party, it can contest the claim on all grounds, as there are no restrictions or limitations in regard to contest. But where an insurer is not impleaded by the claimant as a party, but is only issued a statutory notice under section 149 (2) of the Act by the Tribunal requiring it to meet the liability, it is entitled to be made a party to deny the liability on the grounds mentioned in section 149(2).

(ii) When the owner of the vehicle (insured) and the insurer are aggrieved by the award of the Tribunal, and jointly file an appeal challenging the quantum, the mere presence of the insurer as a co-appellant will not render the appeal, as not maintainable. When insurer is the person to pay the compensation, any interpretation to say that it is not a `person aggrieved' by the quantum of compensation determined, would be absurd and anomalous.

(iii) When an insurer is aggrieved by the quantum of compensation, it is not seeking to avoid or exclude its liability, but merely wants determination of the extent of its liability. The restrictions imposed upon the insurers to defend the action by the claimant or file an appeal against the judgment and award of the Tribunal will apply, only if it wants to file an appeal to avoid liability and not when it admits its liability to pay the amount awarded, but only seeks proper determination of the quantum of compensation to be paid.

(iv) Appeal is a continuation of the original claim proceedings. Section 170 provides that if the person against whom the claim is made, fails to contest the claim, the insurer may be permitted to resist the claim on merits. If and when an award is made by the Tribunal which is excessive, arbitrary or erroneous, the owner of the vehicle has to challenge the same by filing an appeal before the High Court. If the insured (owner of the vehicle) fails to challenge an award even when it is erroneous or

arbitrary or fanciful, it can be considered that the insured has failed to contest the same and consequently under section 170, the High Court or the tribunal may permit the insurer to file an appeal and contest the award on merits.

(v) The Motor Vehicles Act, 1988 (`Act' for short) creates a liability upon the insurer to satisfy the judgments and awards against the insured. The Act expressly restricts the right of the insurer to avoid the liability as insurer, only to the grounds specified in section 149(2) of the Act. Though it is impermissible to add to the grounds mentioned in the statute, the insurer has a right, if it has reserved such a right in the policy, to defend the action in the name of the insured. If it opts to step into the shoes of the insured, it can defend the action in the name of the insured and all defences open to the insured will be available to it and can be urged by it. Its position contesting a claim under section 149(2) of the Act is distinct and different, when it is contesting the claim in the name of or on behalf of the insured owner of the vehicle. In cases, where it is authorized by the policy to defend any claim in the name of the insured, and the insurer does so, it can not be restricted to the grounds mentioned in section 149(2) of the Act, as the defence is on behalf of the owner of the vehicle. Relevant Legal Provisions"

4. We may refer to the position of an insurer and insured in the scheme contained in Chapters XI and XII of the Act.

"4.1) Section 149 deals with the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Sub-sections (1), (2) and (7) are extracted below :

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks :

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) [or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid o cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(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:--

(a) 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

(ii) 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 licence during the period of disqualification; or

(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.

x x x x (7) No insurer to whom the notice referred to in sub-section (2) or sub- section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be."

4.2) Section 147 prescribes the requirements of policies and limits of liability. The relevant portion of the said section is extracted below:

"147. Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:
Provided that a policy shall not be required--"

xxx xxx xxx

4.3) Section 163A makes special provisions as to payment of Compensation on structured formula basis and is extracted below :

"163A. Special provisions as to payment of compensation on structured formula basis.--(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."

xxx xxx xxx

4.4) Section 168 relates to award of the Claims Tribunal and the relevant portion thereof is extracted below :-

"168. Award of the Claims Tribunal.--On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:"

4.5) Section 170 deals with impleading insurer in certain cases and is extracted below :-

"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."

Section 173 deals with appeals and relevant part thereof is extracted below :-

"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:"

Nature of a claim petition under the Motor Vehicles Act, 1988

5. A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependant family members) before the Motor Accident Claims Tribunal constituted under section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete Code in itself. We may in this context refer to the following significant aspects in regard to the Tribunals and determination of compensation by Tribunals:

"(i) A proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (claimants) under section 166(1) or section 163A of the Act or suo moto by the Tribunal, by treating any report of accident (forwarded to the tribunal under section 158(6) of the Act as an application for compensation under section 166 (4) of the Act.

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo moto initiated by the Tribunal.

(iii) In a proceedings initiated suo moto by the tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee under section 149(2) of the

Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident, the driver and owner have to be impleaded as respondents. The claimants need not inplead the insurer as a party. But they have the choice of impleading the insurer also as a party respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under section 149(2) of the Act. If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.

(iv) The words `receipt of an application for compensation' in section 168 refer not only to an application filed by the claimants claiming compensation but also to a suo motu registration of an application for compensation under section 166(4) of the Act on the basis of a report of an accident under section 158(6) of the Act.

(v) Though the tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining the amount of compensation which appears to it to be just. (Vide Section 168 of the Act).

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to the assist it in holding the enquiry (vide section 169 of the Act).

(vii) The award of the Tribunal should specify the person/s to whom compensation should be paid. It should also specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them. (Vide section 168 of the Act).

(viii) The Tribunal should deliver copies of the award to the parties concerned within 15 days from the date of the award. (Vide section 168 (2) of the Act). We have referred to the aforesaid provisions to show that an award by the tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.

NICOLLETTA ROHTAGI

6. In *National Insurance Co. Ltd. vs. Nicolletta Rohtagi* [1]- a three Judge Bench of this Court considered the following two questions :

> "(i) Non-filing of an appeal by the insured amounted to failure to contest the claim and that the right to contest included the right to file an appeal against the award of the Tribunal.

(ii) Where despite the existence of the facts postulated in section 170 of the MV Act, 1988, the Tribunal does not implead the insurance company to contest the claim on grounds available to the insured or the persons against whom claim has been made, or in such a situation rejects the insurer's application for permission to contest the claim on merit or where the claimant has obtained an award by playing fraud, in such cases the insurer has a right of appeal to contest the award on merits. The three Judge Bench, after referring to the decisions in *Shankarrayya vs. United Insurance Co. Ltd*[2]. *Narendra Kumar vs. Yarenissa* [3]- *Chinnamma George vs. N. K. Raju* [4]- *ad Ritu Devi vs. New Delhi Insurance Co. Ltd.*[5]- held as under :

"It was urged by learned counsel appearing for the insurance company that if an insured has not filed any appeal, it means he has failed to contest the claim and that the right to contest include the right to contest by filing an appeal against the award of the Tribunal as well, and in such a situation an appeal by the insurer questioning the quantum of compensation would be maintainable. We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tort-feasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied. For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or

(b) the person against whom the claim has been made has failed to contest the claim, the tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one Scheme and if we give any different interpretation to Section 172 of the 1988 Act, the same would go contrary to the scheme and object of the Act."

A careful reading of the said decision shows that issues (i) and (ii) raised before us did not arise for consideration in Nicolletta Rohtagi, nor were they considered therein.
Re: Point No.(i) : The position in cases where the claimants implead the insurer as a respondent in the claim petition.

7. The scheme of the Motor Vehicles Act, 1988 as contained in Chapters XI (Insurance of Motor Vehicles against Third Party risks) and XII (Claim Tribunals) proceeds on the basis that an insurer need not be impleaded as a party to the claim proceedings and it should only be issued a statutory notice under section 149(2) of the Act so that it can be made liable to pay the compensation awarded by the tribunal and also resist the claim on any one of the grounds mentioned in clauses (a) and (b) of sub-section (2) of section 149. Sub-sections (1), (2) and (7) of section 149 clearly refer to the insurer being merely a noticee and not a party. Similarly, sections 158(6), 166(4), 168(1) and 170 clearly provide for and contemplate insurer being merely a noticee for the purposes mentioned in the Act and not being a party-respondent. Section 170 specifically refers to impleading of insurer as a party to the claim proceedings.

8. When an insurer is impleaded as a party - respondent to the claim petition, as contrasted from merely being a noticee under section 149(2) of the Act, its rights are significantly different. If the insurer is only a noticee, it can only raise such of those grounds as are permissible in law undersection 149(2). But if he is a party-respondent, it can raise, not only those grounds which are available under section 149(2), but also all other grounds that are available to a person against whom a claim is made. It therefore follows that if a claimant impleads the insurer as a party-respondent, for whatever reason, then as such respondent, the insurer will be entitled to urge all contentions and grounds which may be available to it.

9. The Act does not require the claimants to implead the insurer as a party respondent. But if the claimants choose to implead the insurer as a party, not being a noticee under section 149(2), the insurer can urge all grounds and not necessarily the limited grounds mentioned in section 149(2)of the Act. If the insurer is already a respondent (having been impleaded as a party respondent), it need not seek the permission of the Tribunal under section 170 of the Act to raise grounds other than those mentioned in section 149(2) of the Act. The entire scheme and structure of Chapters XI and XII is that the claimant files a claim petition only against the owner and driver and the tribunal issues notice to the insurer under section 149(2) so that it can be made liable to pay the amount awarded against the insurer and if necessary, deny liability under the policy of insurance, on any of the grounds mentioned in section 149(2). If an insurer is only a noticee and not a party- respondent, having regard to the decision in Nicolletta Rohtagi, it can defend the claim only on the grounds mentioned in section 149(2) and not any of the other grounds relating to merits available to the insured-respondent. This is the position even where the claim proceedings are initiated suo moto under sections 149(7) and 158(6) of the Act, without any formal application by the claimants, as the insurer is only a noticee under section 149(2) of the Act.

10. Section 170 of the Act does not contemplate an insurer making an application for impleadment. Nor does it contemplate the insurer, if he is already impleaded as a party

respondent by the claimants, making any application seeking permission to contest the matter on merits. Section 170 proceeds on the assumption that a claim petition is filed by the claimants, or is registered suo moto by the tribunal, with only the owner and driver of the vehicle as the respondents. It also proceeds on the basis that in such a proceeding, a statutory notice would have been issued by the tribunal to the insurer so that the insurer may know about its future liability in the claim petition and also resist the claim, on any of the grounds mentioned in section 149(2). Section 170 of the Act also assumes that the tribunal will hold an inquiry into the claim, where only the claimants and the owner and driver will be the parties. Section 170 provides that if during the course of such inquiry, the tribunal finds and satisfies itself that there is any collusion between the claimant and the owner/driver or where the owner/driver has failed to contest the claim, the tribunal may suo moto, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of the claim, who was till then only a notice, shall be treated as a party to the proceedings. The insurer so impleaded, without prejudice to the provisions of section 149(2), will have the right to contest the claim on all or any of the grounds that are available to the driver/owner.

11. Therefore, where the insurer is a party- respondent, either on account of being impleaded as a party by the tribunal under section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available under section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party. When a statutory notice is issued under section 149(2) by the tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can however be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal under section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim. Re : Point (ii) : Maintainability of a joint appeal by the owner of the vehicle (Insured) and Insurer

12. There is no dispute that when an award is made by the Tribunal, the owner of the vehicle (insured), being a person aggrieved, can file an appeal challenging his liability on any ground, or challenge the quantum of compensation. An appeal which is "maintainable" when the owner of the vehicle files it, does not become "not maintainable" merely on account of the insurer being a co-appellant with the owner. When the insurer becomes a co-appellant, the owner of the vehicle does not cease to be a person aggrieved.

13. This question came up for consideration of a Two Judge Bench of this Court with reference to the provisions of the Motor Vehicles Act, 1939 (`Old Act' for short) in *Narendra Kumar vs. Yarenissa*[6]- This Court held :

> "The question, however, is if such a joint appeal is preferred must it be dismissed in toto or can the tortfeasor, the owner of the offending vehicle, be permitted to pursue

the appeal while rejecting or dismissing the appeal of the insurer. 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*[7]*, New India Assurance Co. Ltd. v. Shakuntla Bai*[8]*, Nahar Singh v. Manohar Kumar*[9]*, Radha Kishan Sachdeva v. Fit, Lt. L.D. Sharma*[10]*,* 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 insurer 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 underSection 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.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."

14. When the issue again came up for consideration before another Two Judge bench of this Court in *Chinnama George & Ors. vs. N. K. Raju & Anr.* [11]- with reference to the provisions of the Motor Vehicles Act, 1988, this Court agreed with Narendra Kumar that the owner of the vehicle is an aggrieved person, but held that a joint appeal would not be maintainable. This Court held :

"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.

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There is no dispute with the proposition so laid by this Court. But the insurer cannot maintain a joint appeal along with the owner or the driver if defence on any ground under Section 149(2) is not available to it. In that situation joint appeal will be incompetent. It is not enough if the insurer is struck out from the array of the appellants. The appellate court must also be satisfied that a defence which is permitted to be taken by the insurer under the Act was taken in the pleadings and was pressed before the Tribunal. On the appellate court being so satisfied the appeal may be entertained for examination of the correctness or otherwise of the judgment of the Tribunal on the question arising from/relating to such defence taken by the insurer If the appellate court is not satisfied that any such question was raised by the insurer in the pleadings and/or was pressed before the Tribunal, the appeal filed by the insurer has to be dismissed as not maintainable. The court should take care to ascertain this position on proper consideration so that the statutory bar against the insurer in a proceeding of claim of compensation is not rendered irrelevant by the subterfuge of the insurance company joining the insured as a co- appellant in the appeal filed by it. This position is clear on a harmonious reading of the statutory provisions in Sections 147, 149 and 173 of the Act. Any other interpretation will defeat the provision of Sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer."

This issue did not arise for consideration of the Three Judge Bench decision in Nicolletta Rohtagi, as the question therein was whether an insurer could file an appeal.

15. On a careful consideration, we are of the view that the decision in Chinnamma George to the extent it holds that a joint appeal is not maintainable, does not lay down the correct law. As observed in Narendra Kumar, the owner of the vehicle does not cease to be an aggrieved person, merely because the insurer is ultimately liable under the terms of the policy or under section 149of the Act. If the owner by himself, can file an appeal as an aggrieved person and such appeal is maintainable, we fail to understand how the presence of the insurer as a co-appellant would make the appeal not maintainable. Whether the owner joins the insurer or the insurer joins the owner, makes no difference to the fact that owner continues to be a person aggrieved.

16. When a joint appeal is filed, to say that the insurer is not an aggrieved person and the owner of the vehicle is also not an aggrieved person, would lead to an anomalous situation and would border on an absurdity. Without entering upon the question whether an insurer is an aggrieved person (which requires to be considered separately), we make it clear that on account of the insurer being a co-appellant, will not affect the maintainability of the appeal. So long as the owner is an appellant and he is a `person aggrieved' in law, the question whether he is independently filing the appeal, or whether he is filing it at the instance of the insurer becomes irrelevant. When a counsel holds vakalatnama for an insurer and the owner of the vehicle in a joint appeal, the court cannot say his arguments and submissions are only on behalf of the insurer and not on behalf of the owner. There is also no need to examine at the threshold in a joint appeal, whether the insurer should be deleted from the array of appellants.

Re : Points (iii) to (v)

17. We may next consider the cases where the insurer is only a noticee under section 149(2) and has not been impleaded as a party to the claim proceedings. The basic premises in Nicolletta Rohtagi is that the insurer can contest a motor-accident claim for compensation only on the grounds mentioned in section 149(2) of the Act. The contention of Insurance Companies is that an Insurer can deny liability under the policy only on the grounds mentioned in section 149(2) of the Act (even though several other grounds may be available under the terms of the policy); and where it does not deny liability or avoid liability under policy of insurance, it can certainly assist the Tribunal in arriving at the just compensation, by contesting any unjust or illegal or erroneous claim by the claimants. We find considerable force in the contention that where a notice is issued under section 149(2) of the Act, the insurer as `noticee' (as contrasted from a `party') can not `deny' its liability as an insurer on grounds other than those mentioned in section 149(2)(a) and (b) of the Act, but nothing prevents it as a person liable to pay the compensation, from assisting the Tribunal in arriving at the `just' compensation. In this context, we may rely upon the observation of this Court in *National Insurance Co. Ltd. v. Jugal Kishore* [12]- referring to section 96(6) of the old Act (Motor Vehicles Act, 1939):

> "....Secondly, from the words "to avoid his liability" used in Sub-section (6) of Section 96 it is apparent that the restrictions placed with regard to defences available to the insurer specified in Sub-section (2) of Section 96 are applicable to a case where

the insurer wants to avoid his liability. In the instant case the appellant is not seeking to avoid its liability but wants a determination of the extent of its liability which is to be determined, in the absence of any contract to the contrary, in accordance with the statutory provision contained in this behalf in Clause (b) of Sub-section (2) of Section 95 of the Act..."

The assumption that as a noticee under section 149(2), the insurer cannot raise any contention other than those mentioned in clauses (a) and (b) of section 149(2) is correct in so far as denial of liability under the policy is concerned. This is because sub-section (1) of section 149 of the Act clearly provides that `notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall subject to the provisions of this section, pay to the person entitled to the benefit.....". Therefore, an insurer, without seeking to avoid or exclude its liability under the policy, on grounds other than those mentioned in section 149(2)(a)and (b), can contest the claim, in regard to the quantum. All that section 149(2) says is that insurer cannot raise all kinds of contentions based on the terms of policy to avoid the contract of indemnity. But it does not require the insurer to concede wrong claims or false claims or not challenge erroneous determination of compensation.

18. Let us take by way of example, a case where the deceased was aged 20 years and the annual loss of dependency was Rs.1,00,000/- to the dependants. The multiplier applicable would be 18 and the compensation would be Rs.18 lakhs. But if the tribunal holds that as the life expectancy of the deceased was 70 as per evidence and therefore, it would apply a multiplier of 50 (that is 70-20), instead of 18 and as a consequence, awards Rs.50 lakhs as compensation, should the insurer be without remedy if the owner and driver do not care to file an appeal, as the liability under the Act is that of the insurer. It is only the insurer, who is required to pay the compensation amount, is interested in filing the appeal. It can file an appeal by itself or it can file an appeal jointly with the owner. If it is denied that opportunity, there is a likelihood of huge compensation being awarded without any correction. The fact that the compensation is not likely to be interfered, may also encourage the Motor Accident Claims Tribunal to make awards which may not be fanciful reasonable. We fail to see why the insurance company cannot challenge the judgment of the tribunal, if it is erroneous. The Act nowhere says that the insurer is not a `person aggrieved' with reference to the amount of compensation awarded which he is required to pay. It is difficult to countenance the submission that a person who is required to a sum of money, from his pocket, has no right even to say :

"Look here, the calculation of the amount claimed is wrong". Interests of justice will not be served by allowing obvious errors to remain uncorrected.

19. The Insurers submit that if the owner of the vehicle (Insured) fails to file an appeal when an erroneous award is made, he fails to contest the same and consequently, the insurer should be able to file an appeal, by applying the principle underlying section 170 of the Code. In this behalf, they relied upon the decision in *United India Insurance Co. Ltd. vs. Bhushan*

Sachdeva[13]- (held to be not good law in Nicolletta Rohtagi) wherein a two Judge Bench of this Court held thus:

> "The person against whom the claim is made is normally the insured of the vehicle involved in the accident. When he failed to contest that claim made against him the insurer gets the opportunity to contest such claim on all or any of the grounds available to the insured. Such a provision was absent in the Motor Vehicles Act, 1939 initially and the Parliament inserted it therein only in March 1970. The right of the insured to contest a claim does not stop with the end of the proceedings before the Tribunal. What is meant by the words "failed to contest"? Those words must be interpreted in a realistic manner. Right to contest would include the right to contest by filing an appeal against the award of the Tribunal as well. Hence the insured can continue to context the claim by filing an appeal as provided under Section 173 of the Act. If the insured fails to prefer an appeal that also would amount to failure to contest that claim effectively. Quite often the insured would lose the desire to contest the claim once he is told that he would not be mulcted with the liability as the same is siphoned off to the insurer. It means that insured had dropped out from contesting a claim midway. In such an eventuality the Act enables the insured to contest it on all grounds available to the insured."

20. In *British India General Insurance Co.Ltd. v. Captain Itbar Singh & Ors.*[14] -- a three Judge Bench of this Court held as under:

> "....The Statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship. We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship if any, by providing for a right to defend the action in the name of the assured and this he has full liberty to do...."

(emphasis supplied)

Nicolletta Rohtagi did not consider the issue with reference to the situation where the insurer is enabled by a specific term in the insurance policy to take over and conduct the defence of the case in the name of the insured, presumably as the insurance policy did not have such an enabling provision. In fact if such a contention had been raised, the court would have noticed that the issue was covered by a binding three-Judge Bench judgment in British India General Insurance. Be that as it may.

21. However, in view of the decision in Nicolletta Rohtagi, we cannot decide points (iii) to (v) in favour of the Insurers. For the aforesaid reasons, in so far as issues (iii) to (v) are

concerned, we are of the view that Nicolletta Rohtagi requires reconsideration by a larger bench. Conclusion

22. We accordingly answer the points arising from the reference as under:

> "(i) Points (i) and (ii) are held in favour of the Insurers. The matters covered by points (i) and (ii) are to be placed before the respective benches for consideration accordingly.
>
> (ii) Points (iii) to (v) which may come in conflict with Nicolletta Rohtagi, are referred to a larger Bench. We accordingly direct these matters (that is, cases where the insurer alone was the appellant before the High Court and where the insurer was only a noticee under section 149(2)and not an impleaded respondent in the claim petition), to be placed before the Hon'ble Chief Justice for constituting a larger bench to consider points (iii), (iv) and
> (v) raised by the insurers.
>
> 20. The parties to file memos indicating whether their cases are covered by points (i) and (ii) or under points (iii) to (iv) to enable the Registry to place the matters appropriately."

Judgment Referred.

[1]*(2002) 7 SCC 0456*
[2]*(1998) 3 SCC 0140*
[3]*(1998) 9 SCC 0202*
[4]*(2000) 4 SCC 0130*
[5]*(2000) 5 SCC 0113*
[6]*(1998) 9 SCC 0202*
[7]*(1980) ACJ 0501*
[8]*(1987) ACJ 0224*
[9]*(1993) 1 ACJ 0269*
[10]*(1993) 27 DRJ 18 (Del)*
[11]*(2000) 4 SCC 0130*
[12]*(1988) 1 SCC 0626*
[13]*(2002) 2 SCC 0265*
[14]*AIR 1959 SC 1331*