

(2024) 11 SIK CK 0018

Sikkim High Court

Case No: Motor Accident Claim Appeal No. 08 Of 2024

National Insurance Company
Limited

APPELLANT

Vs

Nim Lhamu Sherpa And Another

RESPONDENT

Date of Decision: Nov. 21, 2024

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 149, 149(2), 149(7), 163A, 163A(1), 166, 170, 173

Hon'ble Judges: Meenakshi Madan Rai, J

Bench: Single Bench

Advocate: Sushant Subba, Madan Kumar Sundas, Sudesh Joshi, Gazala Parvin, K. B. Chettri

Final Decision: Dismissed

Judgement

Sl. No.,Head,Amount in ₹

1,Loss of earning,"20,16,000

2,Loss of estate,"15,000

3,Love and affection,"1,00,000

4,Cost of litigation,"25,000

,TOTAL,"₹ 21,56,000

13. After the insurer has been made a party to a case or claim, the question arises, what are the defences available to it under the statute? The language employed in enacting sub-section (2) of Section 149 appears",,

to be plain and simple and there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely,",,

sub-section (2) of Section 149 of the 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach",,,

of any other conditions of the policy which do not find place in sub-section (2) of Section 149 of the 1988 Act. If an insurer is permitted to contest the claim on other grounds it would mean adding more grounds of contest to the,,

insurer than what the statute has specifically provided for.â€",,,

(emphasis supplied),,,

(i) It was further observed that sub-section 7 of Section 149 of the 1988 Act clearly indicates the manner in which Section 149(2) is to be interpreted. That, the expression "manner" employed in sub-section 7 of Section 149 is very",,,

relevant which means, an insurer can avoid its liability only in accordance with what has been provided for in sub-section (2) of Section 149. In other words, an insurer cannot avoid its liability on any other ground except those mentioned in sub-",,,

section (2) of Section 149 of the 1988 Act.,,,

(ii) The Court was of the view that the statutory defences which are available to the insurer to contest a claim are confined to those provided in sub-section (2) of Section 149 of the 1988 Act and not more and for that reason, if an insurer is to",,,

file an Appeal, the challenge in the Appeal would be limited to only those grounds.",,,

(iii) The Supreme Court went on to elucidate that the Legislature has, by enacting Section 149 of the Act ensured, that the victims of motor vehicle accidents are fully compensated and protected and compulsory insurance of motor vehicles",,,

was not to promote the business interest of the insurer but to protect the interest of the travelling public or those using the roads, from the risks attendant upon the user of motor vehicles on the roads. If law would have provided only for",,,

compensation to dependants of victims of a motor vehicle accident, that would not have sufficed, unless there was a guarantee that compensation awarded to an injured or dependant of the victim of a motor vehicle accident, could be",,,

recoverable from the person held liable, for the consequences of the accident. 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 specified in Section 170 of the Act is satisfied. Thus, if the insurer is aggrieved against the award, they may file an Appeal

on those grounds and not any other, unless an Order is passed by the",,,

Tribunal under Section 170 of the Act permitting the insurer to avail the grounds available to an insured or any other person against whom claim has been made, on being satisfied of the two conditions specified in the said provision. It was",,,

concluded that, unless the conditions specified in Section 170 of the 1988 Act are satisfied, an insurance company has no right to Appeal to challenge the award on merits. Even if no Appeal is preferred by the insured, it is not permissible for",,,

an insurer to file an Appeal questioning the quantum of compensation as well as the findings regarding negligence or contributory negligence of the offending vehicle.,,,

(iv) That, having cleared the aspect on the grounds for Appeal that are available to the insurer/Appellant, we now turn to the observation of the Supreme Court on Section 170 of the MV Act. On this facet, in *Nicolletta Rohtagi* (supra) it",,,

was laid down as follows;,,

“26. 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 are 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 173 of the 1988 Act, the same would go contrary to the scheme and object of the",,,

11. Appeal dismissed and disposed of.,,

12. No order as to costs.,,

13. Copy of this Judgment be forwarded to all the Learned MACT of the State for information.,,

14. Lower Court records be remitted forthwith.,,