(2000) 11 P&H CK 0048

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.F.O. No''s. 60 and 61 of 1986 and Cross-objection No. 17-CII of 1986

New India Assurance Co. Ltd. and Others		APPELLANT
	Vs	
Malkit Kaur and Others		RESPONDENT

Date of Decision: Nov. 13, 2000

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 149, 173

Citation: (2001) 2 ACC 755 : (2002) ACJ 612

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

By this common judgment, the appeals: F.A.O. Nos. 60 and 61 of 1986 along with Cross-objections No. 17-CII of 1986 can conveniently be disposed of together. Both the appeals arise out of the same award passed by the Motor Accidents Claims Tribunal, Patiala dated 26.11.85. By virtue of the said award the Tribunal awarded Rs. 96,000 as compensation against New India Assurance Co. Ltd. with interest at the rate of 12 per cent per annum from the date of the claim petition till realisation less Rs. 15,000 already paid.

2. At the outset, the attention of the learned Counsel has been drawn towards the decision of the Supreme Court in the case of Chinnama George and Others Vs. N.K. Raju and Another, , as to whether such an appeal would be maintainable or not.

3. The Supreme Court in the case of Narendra Kumar and Another Vs. Yarenissa and Others, , had categorically held that appeal would be maintainable by the driver and the owner and not by the insurer with respect to the amount of compensation.

4. Subsequently, in the decision rendered in the case of Chinnama George and Others Vs. N.K. Raju and Another, , the same argument was advanced. The appeal had been preferred by the insurance company along with the driver and owner of the vehicle. The Apex Court held that such an appeal would not be maintainable. The conclusions drawn were:

10. 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 u/s 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.

5. As mentioned above, the sole question is pertaining to quantum of compensation. This ground is not available to the insurer for purposes of the appeal. Merely because the owner and the driver have been joined as the appellants would not improve upon the version.

6. Consequently, without expressing any opinion on the merits of the matter, both the appeals are dismissed and the cross-objections are dismissed in default.