
(2010) 5 RCR(Civil) 171 : (2009) 2 RLW 1801

Rajasthan High Court (Jaipur Bench)

Case No: None

United India Insurance
Company Limited

APPELLANT

Vs

Smt. Kadi and Others

RESPONDENT

Date of Decision: Dec. 8, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149(2)

Citation: (2010) 5 RCR(Civil) 171 : (2009) 2 RLW 1801

Hon'ble Judges: Narendra Kumar Jain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Narendra Kumar Jain, J.

Heard learned Counsel for the parties.

2. Admit. With the consent of the learned Counsel for both the parties, the appeal was heard finally and is being disposed of.

3. The appellant United India Insurance Company Limited has preferred this appeal against the impugned Award dated 30th June, 2006, passed by the Motor Accident Claims Tribunal, Gangapurcity, in MAC No. 35/2000, whereby the Tribunal awarded a total compensation of Rs. 2,91,500/- in favour of the claimant-respondents in respect of death of Sethram, who died because of the injuries sustained by him in a motor-accident occurred on 24th March, 1999.

4. The only submission of the learned Counsel for the appellant is that the Tribunal committed an illegality in passing the impugned Award in favour of the claimant-respondents for the death of Sethram, who sustained injuries in the motor-accident occurred on 24th March, 1999 but he did not die due to the said injuries and he died after one-and-a-half year i.e. 24th October, 2000. He, therefore, contended

that the Tribunal should have passed the Award in respect of the injuries instead of treating this case as death case.

5. The learned Counsel for the respondents raised a preliminary objection and contended that there is a limited right of appeal of the appellant Insurance Company and it cannot be allowed to challenge the Award on any other ground except breach of terms and conditions of the insurance policy, as mentioned in Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988, as no permission was sought by the appellant Insurance Company u/s 170 of the Act of 1988 of the Tribunal. He further submits that the deceased remained under treatment for the injuries sustained by him in the motor-accident and ultimately because of such injuries he died on 24th October, 2000. He further submits that after appreciating the evidence on the record, the Tribunal recorded a finding that the deceased died because of injuries sustained by him in motor-accident took place on 24th March, 1999. He, therefore, submits that the present appeal is liable to be dismissed being not maintainable.

6. I have considered the submissions of the learned Counsel for the parties and examined the impugned Award in the light of submissions of the learned Counsel for the appellant.

7. The learned Counsel for the appellant fairly and frankly admitted that the appellant Insurance Company did not move any application u/s 170 of the Act of 1988 before the Tribunal to grant permission to it to contest the claim application on the grounds available to the insured or any other person against whom a claim has been made. He further admits that he has not filed this appeal on the ground which is covered by Section 149(2) of the Act of 1988. He submits that he has preferred this appeal only challenging the finding of the Tribunal that the deceased did not die due to the injuries sustained by him in the motor-accident occurred on 24th March, 1999, and contrary finding given by the Tribunal in this regard is not correct.

8. In view of the above, it is clear that no permission was sought by the appellant Insurance Company u/s 170 of the Act of 1988 of the Tribunal to contest the claim application on merits. It is also not in dispute that there is no violation of any provision of Section 149(2) of the Act of 1988.

9. The question will arise for decision in this case as to whether the appellant Insurance Company can be allowed to press this appeal on other grounds except those mentioned in Sub-section (2) of Section 149 of the Act of 1988 in absence of permission of the Tribunal u/s 170 of the Act of 1988.

10. The three-Judges Bench of the Hon"ble Supreme Court in [National Insurance Co. Ltd., Chandigarh Vs. Nicolletha Rohtagi and Others](#), , considered the similar point and held that unless the order is passed by the Tribunal permitting the insurer to avail of the grounds available to the insurer or any other person against whom the claim is made, on

being satisfied of the two conditions specified in Section 170 of the Act of 1988, 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. The Hon"ble Apex Court further held that even if no appeal is preferred u/s 173 of the Act of 1988 by an insured against the Award of the Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as the finding as regards to negligence or contributory negligence of the offending vehicle. The Hon"ble Apex Court, in the above referred case, also considered its earlier judgment in [United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others](#), wherein it was held that if the insured has not preferred an appeal then the insurer is only aggrieved and can prefer appeal, and held that it does not lay down the correct view of law. Section 149(2) of the Act of 1988 limits the insurer"s appeal on the ground enumerated in Section 149(2) of the Act of 1988 only. The main object of enactment of Chapter XI of the Act of 1988 was to protect the interest of the victims and it is for that reason the insurance of all motor vehicles has been made statutorily compulsory. Compulsory insurance of motor vehicle was not to promote the business interest of the insurer engaged in the business of insurance. Para Nos. 26, 27, 31 and 32 of the judgment in National Insurance Company Limited v. Nicolletha Rohtagi"s case (supra) are reproduced as under:

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. Section 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 Act.

27. This matter may be examined from another angle. The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premise that the insured or the persons against whom a claim has been made have

not filed any appeal. Section 149(2) of the 1988 Act limits the insurer's appeal on those enumerated grounds and the appeal being a product of the statute, it is not open to an insurer to take any plea other than those provided in Section 149(2) of the 1988 Act. The view taken in [United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others](#), that a right to contest would also include the right to file an appeal is contrary to well-established law that creation of a right to appeal is an act which requires legislative authority and no court or tribunal can confer such right, it being one of limitation or extension of jurisdiction. Further, the view taken in [United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others](#), that since the insurance companies are nationalised and are dealing with public money/fund and to deny them the right of appeal when there is a collusion between the claimants and the insured would mean draining out or abuse of public fund is contrary to the object and intention of Parliament behind enacting Chapter XI of the 1988 Act. The main object of enacting Chapter XI of the 1988 Act was to protect the interest of the victims of motor vehicle accidents and it is for that reason the insurance of all motor vehicles has been made statutorily compulsory. Compulsory insurance of motor vehicle was not to promote the business interest of the insurer engaged in the business of insurance. Provisions embodied either in the 1939 or the 1988 Act have been purposely enacted to protect the interest of the traveling public or those using the road from the risk attendant upon the user of motor vehicles on the roads. If law would have provided for compensation to dependents of victims of a motor vehicle accident, that would not have been sufficient unless there is a guarantee that compensation awarded to an injured or dependent of the victims of a motor accident shall be recoverable from the person held liable for the consequences of the accident. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* it was observed thus: (SCC p.663, para 13)

In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third-party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependents of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective.

...

31. We have already held that unless the conditions precedent specified in Section 170 of the 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim, in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to

the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in Sub-section (2) of Section 149 of the 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred u/s 173 of the 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.

9. So far as the present case is concerned, even the learned Counsel for the appellant does not dispute that no permission was sought by the appellant Insurance Company from the Tribunal u/s 170 of the Act of 1988; he further admits that there is no violation of any of the provision of Section 149(2) of the Act of 1988 in the present case.

10. In view of the discussion, I am of the view that the appellant Insurance Company cannot be allowed to file/press this appeal on other grounds except those mentioned in Sub-section (2) of Section 149 of the Act of 1988, which are not available in the present case, in absence of permission of the Tribunal u/s 170 of the Act of 1988 to contest the claim on merits.

11. In view of the above, the appeal filed by the appellant Insurance Company is dismissed as not maintainable.

12. Costs is made easy.