(2006) 12 AHC CK 0127

Allahabad High Court

Case No: None

National Insurance Company Ltd.		APPELLANT
	Vs	
Smt. Madhulika Lal and Others		RESPONDENT

Date of Decision: Dec. 7, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 149, 170, 173, 96

Citation: (2007) ACJ 2091 : (2007) 1 ADJ 576 : (2007) 1 AWC 475

Hon'ble Judges: V.M. Sahai, J; Sabhajeet Yadav, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

V.M. Sahai and Sabhajeet Yadav, JJ.

The short question that arises for our consideration in this appeal is where an insured has not preferred an appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act") against an award given by the Motor Accident Claims Tribunal, is it open to the insurer to prefer an appeal against the award by the Tribunal questioning the quantum of the compensation, as well as finding as regards the negligence of the offending vehicle in absence of permission u/s 170 of the Act granted by the Tribunal?

2. This appeal is preferred by the insurance company/insurer of the offending vehicle u/s 173 of the Act against the award dated 5.5.1999 passed by Motor Accident Claim Tribunal/Special Judge, Essential Commodities Act, Bareilly in M.A.C.T. No. 340 of 1993, whereby Tribunal has awarded a sum of Rupees 10,80,000 (Ten lacs eighty thousand) as compensation alongwith 8% (eight per cent) interest thereon from the date of filing of claim petition before Tribunal to the claimants-respondents. No appeal appears to have been filed by the insured/owner of the offending motor vehicle.

3. The facts leading to this appeal are that on 13.8.1993 Amod Lal and Sunil Kumar Jain were travelling in Marutl Van No. D.N.J. 194 from Bareilly to Nainital when an accident took place at about 5.15 p.m. due to head-on collision between Maruti Van and Mini Bus No. U.P. 25/6493. In the accident Amod Lal died. The heirs of the deceased filed a claim petition which was numbered as M.A.C.T. No. 340 of 1993 before the Motor Accident Claims Tribunal claiming Rs. 30-00 lakhs as compensation on the ground that the accident took place due to rash and negligent driving of Mini Bus No. U.P. 25/6493. It was claimed that Amod Lal was serving in M/s. Western Electronics, Okhla Industrial Area, New Delhi and his monthly salary was Rs. 8,000 per month and Rs. 4,000 was given to him as house rent allowance and other perks car, telephone bonus etc. was also provided. The owner of the Mini Bus, the respondent No. 5 filed written statement alleging that the vehicle was being driven by a driver, who was having a valid driving licence and the vehicle was insured with National Insurance Company from 7.7.1993 to 6.7.1994 as per cover note No. 704436 and liability, if any, to pay compensation was of the insurance company. The National Insurance Company contested the claim on the ground that the vehicle was not driven by a driver who was having valid driving licence and details of insurance policy had not been given. The claimants are not legal representatives of the deceased and they are not entitled for any compensation. The accident took place due to the negligent driving of the vehicle in which the deceased was travelling and the insurance company was not liable to pay any compensation. However, the Motor Accident Claims Tribunal by its award dated 5.5.1999 awarded Rs. 10,80,000 compensation to the claimants for the death of deceased Amod Lal. While awarding aforesaid compensation the Tribunal has held that the accident took place due to rash and negligent driving of the Mahindra Mini Bus No. U. P. 25/6493 due to which Amod Lal who was travelling in the Maruti Van had died. The Tribunal has further held that on the date of accident the vehicle was insured by National Insurance Company and has awarded Rs. 10,80,000 compensation to be paid by the insurance company to the claimants.

4. We have heard Sri M. S. Haq, learned Counsel for the appellant and Sri Shashi Nandan, learned senior counsel assisted by Miss. Awantika Banerji for the respondents. Learned Counsel for the appellant has urged that quantum of compensation was excessive as dependency and multiplier had wrongly been worked out. There was contributory negligence of drivers of both the vehicles but this had not been considered by the Tribunal in correct perspective though it was argued. On the other hand learned Counsel for the claimants has urged that this appeal on quantum of compensation on merits Including negligence or contributory negligence is not maintainable as no permission had been granted by the Tribunal u/s 170 of the Act.

5. Hon''ble Apex Court has occasion to consider similar question in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, wherein after analyzing the relevant provisions of Sections 147, 149, 170 and 173 of the Act in para

18 of the decision, Hon''ble Apex Court held as under:

18. The aforesaid provisions show two aspects. Firstly, that the insurer has only statutory defences available as provided in Sub-section (2) of Section 149 of the 1988 Act and, secondly, where the Tribunal is of the view that there is a collusion between the claimant and the insured, or the insured does not contest the claim, the insurer can be made a party and on such impleadment the insurer shall have all defences available to it. Then comes the provision of Section 173 which provides for an appeal against the award given by the Tribunal. u/s 173, any person aggrieved by an award is entitled to prefer an appeal to the High Court. Very often the question has arisen as to whether an insurer is entitled to file an appeal on the grounds available to the insured when either there is a collusion between the claimants and the insured or when the Insured has not filed an appeal before the High Court questioning the quantum of compensation. The consistent view of this Court had been that the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of offending vehicle.

6. For better understanding of the controversy, it would be useful to refer the cases considered by Hon''ble Apex Court in paras 19 to 23 of the aforesaid decision as under:

19. In Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, it was held that an insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless this procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defences. In absence of the existence of the conditions precedent mentioned in Section 170, the Insurance company was not entitled to file an appeal on merits questioning the quantum of compensation.

20. In Narendra Kumar and Another Vs. Yarenissa and Others, , question arose whether there can be a joint appeal by an Insurer and owner of the offending vehicle. It was held that even in the case of a joint appeal by the Insurer and the owner of an 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. In the said case, it also held thus : (SCC p. 206, para 5).

The grounds on which the insurer can defend the action commenced against the tortfeasors are limited and unless one or more of those grounds is/are available the insurance company is not and cannot be treated as a party to the proceedings. That

is the reason why the Courts have consistently taken the view that the insurance company has no right to prefer an appeal u/s 110D of the Act unless it has been impleaded and allowed to defend on one or more of the grounds set out in Sub-section (2) of Section 96 or in the situation envisaged by Sub-section (2A) of Section 110C of the Act.

21. In Chinnama George and Others Vs. N.K. Raju and Another, it was held that if none of the conditions as contained in Sub-section (2) of Section 149 exists for the insurer to avoid the liability, the insurer is legally bound to satisfy the award and the insurer cannot be a person aggrieved by the award. In such a case, the insurer will be barred from filing an appeal against the award of the Tribunal. It was also held that the insurer cannot maintain a joint appeal alongwith the owner or driver if defence of any ground u/s 149(2) is not available to it.

22. In Rita Devi v. New India Assurance Co. Ltd., it was held that the insurer having not obtained permission u/s 170 of the 1988 Act, is not entitled to prefer any appeal to the High Court against the award given by the Tribunal on merits.

23. However, in United India Insurance Co. Ltd. v. Bhushan Sachdeva, it was held that where the insured fails to file an appeal to the High Court against the quantum of compensation awarded by the Tribunal, the insurer is entitled to file an appeal as the insured has failed to contest the claim and in that view of the matter, the insurer could be a person aggrieved. This is the only decision which has taken a contrary view to the consistent view of this Court in regard to maintainability of appeal at the instance of an insurer. In our view, the decision in United India Insurance does not lay down the correct view of law for the reasons stated hereinafter.

7. Thereafter Hon''ble Apex Court in paras 26, 27, 30, 31 and 32 of the decision held 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. 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 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. v. Bhushan Sachdeua, 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 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 1998 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 travelling 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 dependant 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. Vs. Kokilaben Chandravadan and Others, it was observed thus:

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 dependants 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.

30. It was then urged that if there is a collusion between the claimants and the insured does not contest the claim and the Tribunal does not implead the insurance company to contest the claim on the grounds available to the insured or the persons against whom claim has been made, or in such a situation when the insurer files an application for permission to contest the claim on merit and the same is rejected 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 and the appeal would be maintainable.

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.

8. In view of the aforesaid legal position as explained by the Apex Court, it is clear that in absence of any permission granted by the Tribunal u/s 170 of the Motor Vehicles Act the insurer/ Insurance company can file appeal challenging the award only on the limited grounds available to the insurer u/s 149(2) of the Act. In our opinion, it is not open for the insurer/appellant to challenge the quantum of compensation fixed by the Tribunal on merits including the ground of negligence and/or contributory negligence of the offending vehicle.

9. The contention of the learned Counsel for the appellant that if an insured has not filed any appeal, it means he has failed to contest the claim and that the right to contest includes the right to contest by filing an appeal against the award of Tribunal as well and in such situation an appeal by the Insurer questioning the quantum of compensation including negligence or contributory negligence would be maintainable or in a situation when the insurer files an application for permission to contest the claim on merit and the same is rejected or where the liability of payment of compensation is fastened upon the insurer and the insured does not prefer appeal against the award of Motor Accident Claims Tribunal in that situation the award made by Motor Accident Claims Tribunal on the question of quantum of compensation inasmuch as on the question of negligence or contributory negligence howsoever erroneous it may be, would attain the finality and if the insurer cannot be permitted to challenge the same by filing appeal u/s 173 of the Act on the quantum of compensation on merit including negligence of offending vehicle In that situation it would cause serious mischief and miscarriage of justice, cannot be accepted for the simple reason that the Hon''ble Apex Court has dealt with the issue in quite detail and has also repelled somewhat similar contention raised by appellant in the aforesaid case, therefore, this Court cannot take different view in the matter as the law declared by Hon''ble Apex Court is binding upon us.

10. From the records, we do not find that any ground had been taken by the insurance company that there was any breach of Insurance policy. We have also examined the records. We do not find that any permission had been applied by the Insurance company u/s 170 of the Motor Vehicles Act, 1988 and the same was either refused or granted by the Tribunal.

11. In view of our findings the argument of the learned Counsel for the appellant that the accident took place due to contributory negligence of drivers of both the vehicles had not been considered by the Tribunal cannot be accepted.

12. Thus, the appeal falls and is dismissed.

13. Office is directed to send back the records of the court below expeditiously.

14. Parties shall bear their own costs.