

(2008) 08 AHC CK 0332

Allahabad High Court

Case No: None

The New India Assurance
Company Limited

APPELLANT

Vs

Smt. Rajwati Devi and Rajvir
Singh

RESPONDENT

Date of Decision: Aug. 13, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 170

Citation: (2009) 1 AWC 364

Hon'ble Judges: Amitava Lala, J; A.P. Sahi, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Amitava Lala, J.

Leave is granted to the appellant to correct the typing error in the valuation column of the memo of appeal by red ink.

2. In this appeal the appellant-insurance company has challenged the judgement and order dated 07th May, 2008 passed by the concerned Motor Accidents Claims Tribunal, Bulandshahar in spite of rejection of its application u/s 170 of the Motor Vehicles Act, 1988 (hereinafter called as the "Act"). It appears that in spite of our judgement as reported in 2007 (4) ADJ 101 [National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others](#), the appellant did not choose to make any revisional application but waited for a period of six months to get the order reached to the finality and when it has reached to its finality, the appellant has challenged the same by way of present appeal taking a plea that the driver, who was a necessary party, was not made party in the proceeding. We failed to understand that when the driver is primarily liable, owner is vicariously liable and the insurance company is indemnifier and when the application u/s 170 of the Act was rejected,

why no revisional application has been made before the appropriate Court by the insurance company having been failed before the tribunal.

3. However, the tribunal considered the issue that in the year 2006 it was not the position of law to make the driver as necessary party. In any event, we find from the judgement delivered by a Division Bench of the Supreme Court as reported in [The Oriental Insurance Company Limited Vs. Meena Variyal and Others](#), the Supreme Court has held that it is expected that the driver should be made party before the tribunal. In such judgement the Supreme Court has held as follows:

9. ...Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves u/s 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed u/s 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident....

(Emphasis supplied)

4. But at the same time it is desirable that in a case of summary proceeding to ascertain the compensation under the beneficial piece of legislation, no hypertechnical attitude is to be taken by any of the parties. The insurance company can not avoid its responsibility of taking such plea before the tribunal or in the revisional Court or to make the application for calling the driver as witness at least to ascertain the truth.

5. Therefore, to strike a balance we dispose of the appeal at the stage of admission giving liberty to the appellant-insurance company to make an appropriate application, if so advised, for the necessary purpose in the case before the tribunal which will be heard and disposed of upon notice to all concerned including the driver and affording adequate opportunity of hearing. However, under no

circumstances the payment of compensation to the ultimate sufferer i.e. claimant will be stalled.

However, no order is passed as to costs.

6. Incidentally, the appellant-Insurance Company prayed that the statutory deposit of Rs. 25,000/- made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimant, however, such prayer is allowed.