
United India Insurance Co. Ltd. Vs Soti

First Appeal From Order Defective No. 373 of 2016

Court: ALLAHABAD HIGH COURT

Date of Decision: Jan. 18, 2017

Citation: (2017) 3 ADJ 699

Hon'ble Judges: Dr. Kaushal Jayendra Thaker, J.

Bench: Single Bench

Advocate: Sushil Kumar Mehrotra, Advocate, for the Appellant; Akhilesh Chandra Srivasta, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Dr. Kaushal Jayendra Thaker, J.â€”Though notice is served, none appears for the respondent. The reasons given for condonation of delay is

that the United India Insurance Co. Ltd. (hereinafter referred to as "Insurance Company") was not aware that the fraud had been committed on

them and they came to know about the award only after the execution was filed and they preferred a review which was rejected by the Tribunal

below.

2. By way of this appeal the Insurance Company has felt aggrieved by the judgment and decree dated 30.08.2008 granting relief of Rs.1,87,000/-

in favour of the claimants. The main challenge is that according to the Insurance Company the cyclist who died had contributed to the accident

having taken place. The next point is that it is well settled that no liability of payment of compensation can be fastened upon insurance company,

wherein a case, insurance of particular vehicle was not valid and effective on the date of accident, but the Motor Accident Claims Tribunal despite

specific pleading to this effect that in case of any manipulation in the insurance papers, the insurance company can not held liable to make payment

of compensation, committed illegality in awarding compensation against appellant-insurance company, hence on this ground alone the impugned

award is erroneous and liable to be set aside.

3. The Insurance Company have filed an application under Order 9, Rule 13 however it was not an ex parte. There was no forgery or fraud hence

the Tribunal cannot be said to have committed any illegality and the submission of the learned counsel for the respondent that it was not an ex parte

as it was an award given in the presence of the Insurance Company which has appeared before the Tribunal and files its written statement. The

application being Misc. Case no. 14 of 2008 in MACP No. 38 of 2008 was also not proved that there was any forge committed on Insurance

Company. The recall application requesting the Tribunal to recall of the order dated 30.05.2008 was rejected the same on the ground that review

is not maintainable. The Tribunal in its well reasoned order has held as follows:

Hon"ble the High Court of Allahabad in the case of 2003(1) TAC 551(Alld) Raj Kumari and others v. Motor Accidents Claims Tribunal,

Jaunpur and others has held that the review application cannot be entertained either under the old Act or under the new Act. The Division Bench of

Hon"ble High Court of Allahabad has in the case of 1991(1) TAC 449 (Alld) New India Assurance Co. Ltd. v. Bimla Devi, has observed

that since there is no specific provision to review or the revision, which is to be created under only statute, the Tribunal has no power to review the

award passed by it. Also the combined reading of Section 169 and Rule 221 of the Motor Vehicle Act and Rules thereunder, it can be said that

the Motor Accident claims Tribunal do not possess the power to review its own award.

Thus is view of the above, the review application is liable to be dismissed accordingly.

4. While going through the entire record and the first original order dated 30.05.2008 and the policy which is produced goes to show that the

Insurance Company did not either plead or prove that it was a forged policy and even in their reply, the said fact was neither mentioned nor was

that plea being taken and therefore it is an admitted position of fact that they have waited for such a long period despite the fact that the Insurance

Company was well aware that review is not maintainable, that cannot be a ground for condoning such a huge delay. However, even on merits the

claim petition 38 of 2002 was decided whereas Tribunal founded its judgment on the basis of the policy which was invoked and the terms and

conditions were not breached.

5. The question of contributory negligence of a cyclist pales into insignificance that is also being decided by this Court. Going through the finding of

fact recorded by the Tribunal, it cannot be said that the cyclist was in any way negligent in driving the cycle.

6. The Tribunal has given finding in paragraph 12-13 holding Insurance Company to be liable. The Insurance Company did not take any stand that

it was a forged document hence the decision cited by the counsel i.e. Union of India Insurance Co. Ltd. v. Rajendra Singh and Others,

(2000) 3 SCC 581 will be of no avail as even on merits it cannot be said that there was any fraud committed by the owner.

7. The delay is of 7 years and 189 days. The Insurance Company has filed an application under Order 9, Rule 13 . Even if we consider that it was

disposed of on 30.10.2015 this appeal is filed on 4.3.2016. It cannot be said that the judgment of the Tribunal was ex parte as while going through

the judgment, it is clear that the Insurance Company was well represented by a counsel. The deceased had died way back in the year 1999 more

particularly on 15.4.1999 we are in the year 2016. The Insurance Company did not adduced any evidence to so that the policy was being forged

or not a genuine one. This defective appeal filed after a delay of about 7 years challenging the findings by the Tribunal both in review as well as

original order dated 30.5.2000 which was wrongly mentioned under Order 9, Rule 13 as the Insurance Company had been represented by a

counsel and written statement was also filed.

8. In a similar writ petition being 60921 of 2015 this Court has held as follows:

I have heard learned counsel for the petitioner. After considering the submissions of learned counsel for the petitioner, I find that there is no

dispute that the petitioner had not contested the case before the Tribunal. It is also not in dispute that the insurance cover, which is said to be

forged and fabricated one, was not on record when the case was decided. In such a situation, the material which was placed before the Tribunal,

belonging to the insurance company itself, why its genuineness was not seen by the Officials of the insurance company/lawyer of the insurance

company when the case was under progress. This would lead to suggest that the insurance company was thoroughly negligent at the time of

contesting the case. Assuming the allegation of fraud / fabrication in the insurance cover is taken to be true, in such a situation, the appropriate

course for the petitioner was to file appeal against the award rendered by the Tribunal as in the submissions of learned counsel for the petitioner,

such ground was taken in the objection.

The judgment of the Apex Court in Rajendra Singh's case (supra) cited by the learned counsel for the petitioner is distinguishable on facts that

there, the allegation of fraud was not based upon the papers which were in custody of the insurance company. It was with regard to the injuries

sustained by the claimants which was later on found to be fraudulent. Therefore, the petitioner cannot take advantage of the aforesaid judgment of

the Hon"ble Apex Court.

9. Thus, this appeal at the behest of the Insurance Company who challenged the very impugned order by way of a writ petition against the same

cause in this very case and have lost and, therefore, also this second innings by way of this appeal with delay condonation application cannot be

permitted to be allowed.

10. Thus, this appeal fails on merits and even on delay which is of 7 years and 189 days and is not properly explained. Thus, the delay

condonation as well as appeal fail and are dismissed.