(2004) 09 UK CK 0020

Uttarakhand High Court

Case No: A.F.O. No. 181 of 2002

National Insurance Co. Ltd.	APPELLANT
Vs	
Chandra Bisht and Others	RESPONDENT

Date of Decision: Sept. 13, 2004

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149(2), 170, 173, 66
- Uttar Pradesh Motor Vehicles Rules, 1998 - Rule 67

Citation: (2005) 3 ACC 855 : (2006) ACJ 2663 : (2005) 2 UC 929 : (2005) 1 UD 66

Hon'ble Judges: P.C. Verma, J; B.S. Verma, J

Bench: Division Bench

Advocate: Lalit Belwal and D.S. Patni, for the Appellant; P.C. Maulekhi, Dharamveer, B.C. Pande, Z.U. Siddiqui, Naresh Pant, Dinesh Chauhan, V.S. Dangwal, Hira Singh, R. Mohan, K.S. Kutiyal, R.S. Sammal, P.C. Bisht, B.S. Rawat, M.P. Sah and R.S. Latwal, for the Respondent

Final Decision: Allowed

Judgement

P.C. Verma, J.
All these appeals are being heard together and decided by one and common order as the facts and question involved are common and also the vehicle involved in the accident and the date of accident is same.

2. Opposite party-appellant National Insurance Co. Ltd. has preferred the appeals (SI. Nos. 1 to 16) against the one and common judgment dated 18.6.2002 passed by the Motor Accidents Claims Tribunal/ Second Fast Track Court, Nainital in the Motor Accident Claim Petitions (Leading Case No. 162 of 2000).

Appeals (SI. Nos. 17 to 22) have been preferred against the one and common judgment dated 23.3.2002 passed by the Motor Accidents Claims Tribunal/Addl. District Judge, Kashipur, District Udham Singh Nagar in Motor Accident Claim Petitions (Leading Case No. 33 of 2000).

A writ petition (SI. No. 23) and appeals (SI. Nos. 24 to 31) have been preferred against the one and common judgment dated 27.8.2002 passed by Motor Accidents Claims Tribunal/Second Fast Track Court, Nainital in Motor Accident Claim Petitions (Leading Case No. 173 of 2000).

Appeals (SI. Nos. 32 to 35) have been preferred against the one and common judgment dated 3.7.2002 passed by the Motor Accidents Claims Tribunal/Addl. District Judge, Nainital in Claim Petition (Leading Case No. 235 of 2000).

The Appeal Nos. 230 and 246 of 2002 have been preferred against the separate judgment and award both dated 3.7.2002 passed by the Motor Accidents Claims Tribunal/Addl. District Judge, Nainital in Claim Petition Nos. 236 and 237 of 2000, respectively.

Appeals (SI. Nos. 38 to 44) have been preferred against the separate judgment and awards dated 24.8.2002 passed by the Motor Accidents Claims Tribunal/District Judge, Almora in Claim Petition Nos. 29 of 2000, 30 of 2001, 39, 28, 30, 27 and 32 of 2000, respectively.

Appeals (SI. Nos. 45 to 47) have been preferred against the one and common judgment dated 19.9.2003 passed by the Motor Accidents Claims Tribunal/District Judge, Nainital in Claim Petitions (Leading Case No. 200 of 2000).

3. All these cases under appeals have been decreed by the Tribunals along with interest at the rate of 9 per cent per annum against which the opposite party National Insurance Co. Ltd. has come up in appeals.

In Claim Petition Nos. 200, 5 and 197 of 2000 against which the claimants have preferred Appeal Nos. 502, 498 and 495 of 2003, respectively the Motor Accidents Claims Tribunal, Nainital (hereinafter referred to as ''the Tribunal'') has not granted interest on the amount of compensation. Claimants have preferred these appeals for grant of interest on the amount of award.

4. Facts in brief giving rise to these appeals are that on 27.4.2000 at about 6.30 p.m. vehicle, bus No. UP 02-A 8221, was returning from village Sakhital, District Almora to Ram Nagar (District Nainital) carrying a marriage party. When the said bus reached near village Bisoli, within the Patwari circle Tukura, Tehsil Bhikiyasain, it fell into a ravine (khud) due to rash and negligent driving by its driver in which several persons of the marriage party died and several persons sustained grievous injuries. Opposite party Kumaon Adarsh Motor Yatayat Sahkari Samiti Ltd. is the owner of the said bus and it was insured with opposite party National Insurance Co. Ltd. The injured who sustained injuries and dependants of the deceased who died in this accident filed above claim petitions before the Tribunal in different districts for compensation which were allowed.

5. The opposite parties except the driver of the vehicle in question contested the claim petitions before Tribunals by filing their separate written statements. Opposite

party Kumaon Adarsh Motor Yatayat Sahkari Samiti Ltd. admitted the ownership of bus in question No. UP 02-A 8221 and also did not deny the accident on the aforesaid date, time and place. It was alleged that the said bus was being driven by its driver cautiously by following traffic rules and accident occurred due to mechanical fault. The opposite party National Insurance Co. Ltd. alleged in its written statement that the vehicle was being plied violating the terms and conditions of the insurance policy. It was also pleaded that the alleged bus was carrying passengers beyond the prescribed limit. The Tribunals, on the pleadings of the parties, framed necessary issues in each case and allowed the petitions for grant of compensation. Feeling aggrieved National Insurance Co. Ltd. has come up in these appeals and in some cases the claimants-respondents against the rejection of rate of interest on the amount of award, preferred the appeals accordingly.

6. The learned Counsel for the appellant National Insurance Co. Ltd. challenged the judgments under appeals on the ground that there was a breach of policy inasmuch as the motor vehicle was insured as passenger vehicle and up to 41 passengers, while from the evidence it stands established that there were 45 death cases and 15 injured as per magisterial inquiry report. The learned Counsel for the appellant submitted that the overloading is a breach of policy as provided in Sub-rule (v) of Rule 67 of the Uttar Pradesh Motor Vehicles Rules, 1998 which reads as under:

That the maximum number of persons or the maximum weight of luggage that may be carried in the vehicle covered by the permit shall not exceed as given in the certificate of registration.

7. Since there was breach of policy, therefore, this ground was available to the appellant under Sub-clause (c) of Sub-clause (i) of Clause (a) of Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988 (in short ''the Act''). The learned Counsel for the appellant placed reliance to the provision of Section 66 of the Act and submitted that on account of this breach of policy the owner of the vehicle was prohibited to use or permit the use of vehicle as transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority. In view of this prohibition created by Section 66 of the Act the appellant could not use the motor vehicle even for the purpose for which the permit was granted. Therefore, vehicle was not being used for the purpose for which the permit was granted. Thus, the ground under Sub-clause (c) of Sub-clause (i) of Clause (a) of Sub-section (2) of Section 149 of the Act is available to challenge the liability fastened upon the appellant beyond the passengers insured under the permit.

8. We think it appropriate to quote the definition of ''permit'' given in the Motor Vehicles Act, 1988 which reads as under:

''permit'' means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle.

9. It is clear from the definition that the permit is issued by the authority prescribed authorising the use of a motor vehicle as a transport vehicle. In the instant case the vehicle in question was a passenger vehicle.

10. In order to appreciate the aforesaid submissions we think it also appropriate to quote Sub-section (2) of Section 149 of the Act, which reads as under:

No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle&#65533;

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

11. From perusal of above, it is clear that the section starts from the word, ''No'' which creates a prohibition for raising the grounds of appeal by insurance company, except on the grounds mentioned in Clause (a) or Clause (b) of Sub-section (2).

Sub-clause (c) of Sub-clause (i) of Clause (a) of Sub-section (2) of Section 149 specifically provides for the purpose not allowed by the permit under which the vehicle is used. A motor vehicle is used only for two purposes as comes out from Section 66 of the Act itself; one for carrying the passengers another for carrying the goods. The ground under the provision of Sub-clause (c) aforesaid shall be available to the insurer only in case, if goods are being carried by the passenger vehicle or passengers are being carried by a goods vehicle beyond the number mentioned in the permit. Then the use will be for the purpose not allowed by the permit. The breach of all the conditions of permit is not the ground available to the insurer to file an appeal. Only those conditions which are enumerated under Clause (a) of Sub-section (2) aforesaid are only the grounds to be raised by the insurer as grounds of appeal.

12. Hon''ble Apex Court in the case of B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, , while considering the liability of insurance company for payment of compensation to the passengers which were travelling in a goods vehicle beyond the number of passengers held that it was not a fundamental breach. Therefore, the insurance company was held liable for payment of compensation. In the present case, admittedly, the permit of the vehicle was granted for the use of carrying passengers and the accident took place when the vehicle was carrying the passengers. Therefore, this ground is not available to the appellant under Sub-clause (c) of Sub-clause (i) of Clause (a) of Sub-section (2) of Section 149 of the Act.

13. Learned Counsel for the appellant submitted that the facts of the case of B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, , are not applicable in the facts and circumstances of the present case as that was a case where breach was not so fundamental but here in the present case the breach is fundamental. The argument advanced by the learned Counsel for the appellant is misconceived. We have quoted above the law laid down by Apex Court in B.V. Nagaraju''s case (supra). In that case the goods vehicle was carrying the passengers beyond the permitted limit. Here in the present case, the permit of the vehicle was for carrying the passengers. Therefore, no ground is available to the appellant under the Sub-clause (c) of Sub-clause (i) of Clause (a) of Sub-section (2) of Section 149 of the Act.

14. Learned Counsel for the appellant further submitted that under Clause (b) of Section 170 of Motor Vehicles Act, 1988 all the grounds are available to appellant in appeal, which provide the right to contest the claim on any of the grounds the claim has been made. Therefore, the appellant can press this appeal on the grounds on which the insured could press the appeal. Learned Counsel for the appellant relied on para 9 of the judgment of Division Bench of this Court in United India Insurance Co. Ltd. Vs. Gurjeet Kaur and Others, , which is quoted as under:

The only issue is whether appeal u/s 173 of the Motor Vehicles Act, 1988, filed by insurance company is non-maintainable. We find merit in the preliminary objection raised on behalf of the claimants. In the above judgment of the Supreme Court, it has been held that the insurance company can defend the claim petition only on the ground of breach of conditions of policy or on the ground that the policy is void for reasons given in Section 149(2) of the Act. That the insurance company cannot avoid its liability on any ground except those mentioned in Section 149(2) of the Act. That the insurer has no right to file an appeal to challenge the quantum of compensation or the finding of the Tribunal as regards negligence or contributory negligence of the offending vehicle except in cases where Section 170 is applicable. That, in cases where in the course of inquiry, the Tribunal is satisfied that there is collusion between the claimant and the person against whom the claim has been made or if the Tribunal is satisfied in course of inquiry that 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 on the grounds which are available to the insured. Therefore, where the conditions precedent to Section 170 are satisfied and the award is adverse to the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence on the part of the offending vehicle.

15. A perusal of the aforesaid judgment itself shows that where the conditions precedent to Section 170 of the Act are satisfied and award is adverse to the insurer, the insurer has the right to file an appeal challenging the quantum of compensation or negligence or contributory negligence on the part of the offending vehicle. As we have factually noticed in this appeal that the conditions precedent to Section 170 are not available to the appellant in view of the fact that the insured was already a party. They were contesting the claim petitions. The application u/s 170 of the Act for permission has to be bonafide and filed at the stage when the insured was required to lead his evidence. The Apex Court, while considering this issue has categorically held in para 31 of the case National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , that:

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 grounds 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 seeking permission is erroneously rejected the insurer can challenge only that part of the

order while filing an appeal on the grounds specified in Sub-section (2) of Section 149 of 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.

16. Learned Counsel for the appellant further submitted that since the Claims Tribunal has held that all the grounds are available to the appellants while rejecting the application u/s 170 of Motor Vehicles Act, it is open for the appellant to press these appeals on all grounds available to the insured. The argument is based on the finding of Tribunal which is contrary to the law laid down by the Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , Section 170 of Motor Vehicles Act provides certain grounds available to the insurer only in case of collusion between claimant and the owner of the vehicle in question or where the person against whom claim has been preferred has failed to contest the claim. The Apex Court has specifically said that in case of rejection of an application u/s 170, the insurer can file an appeal against the said rejection order. As held by us that breach of condition No. (v) framed under Rule 67 of the Uttar Pradesh Motor Vehicles Rules, 1998 is not a breach of condition on the basis of which the insurer can file an appeal under Sub-clause (c) of Sub-clause (i) of Clause (a) of Sub-section (2) of Section 149 of the Act. Therefore, ground of challenge is misconceived and is hereby rejected.

17. Learned Counsel for the appellant next contended that in Appeal Nos. 180 to 187, 220 to 224, 226, 229 to 231 of 2002 applications u/s 170 of the Act were filed but no orders were passed. In Appeal Nos. 336 to 342 of 2002, the applications u/s 170 of the Act were filed but were rejected and in Appeal Nos. 140 to 145 of 2002, 436, 438 and 500 of 2003 the said applications were not filed. It is admitted by the learned Counsel for the appellant that in the cases in which the application u/s 170 of the Act has been moved it was moved sometimes in the year 2002 while the evidence of the claimants and insured and of the insurer were closed in the year 2001. Therefore, the applications u/s 170 of the Act were not liable to be entertained in view of the law laid down by the Supreme Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , wherein their Lordships have held that such application for permission has to be bona fide and filed at the stage when insured is required to lead his evidence. Filing of the application u/s 170 of the Act at such belated stage creates a doubt on the application itself and since the applications were filed when the dates in the cases were fixed for argument, therefore, the Tribunal rightly rejected the applications and in other cases appellant itself did not press the applications. Therefore, at this appellate stage, appellant has no right to contest these appeals on all the grounds, which are available to the insured.

18. Therefore, the contention of the learned Counsel for the appellant has no force and is rejected.

19. Learned Counsel for the appellants-claimants in Appeal Nos. 495, 498 and 502 of 2003 contended that the learned Tribunal has erred in not awarding the interest on the amount of compensation in Claim Petition Nos. 197, 5 and 200 of 2000 against which the claimants have come up in the aforesaid appeals respectively. In the interest of justice, we think it appropriate, if these claim petitions would have been decreed along with interest.

20. Learned Counsel for the appellant insurance company also submitted that in some claim petitions the Tribunal at the very higher rate has fixed the interest on the amount awarded. In view of the aforesaid contentions of learned Counsel for the claimants-appellants and opposite party-appellant insurance company we provide that in all the claim petitions under appeals the rate of interest on the amount awarded as compensation will be 6 per cent per annum.

21. We, therefore, modify the rate of interest on the amount awarded as compensation in all these cases accordingly.

22. In view of above, all the appeals filed by the appellant insurance company fail and are dismissed. The writ petition is also dismissed. No order as to costs. The amount, if deposited in these cases by the appellant insurance company in this Court, shall be remitted to the Tribunal concerned by the Registry within two months from today.

23. The Appeal Nos. 495, 498 and 502 of 2003 filed by the claimants are allowed. Claimants-appellants shall be paid interest at the rate of 6 per cent per annum on the amount of compensation awarded from the dates of filing of claim petitions till the date of payment.