

(2002) 07 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : L.P.A.C. No's. 2 to 4 of 2000

Azad Ahmad and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 170, 173

Citation : (2004) ACJ 1918 : (2010) 4 JKJ 845

Hon'ble Judges : T.S. Doabia, J; S.K. Gupta, J

Bench : Division Bench

Advocate : B.S. Bali, for the Appellant; R.K. Gupta and D.R. Khajuria, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gupta, J.—These three Letters Patent Appeals arise out of a common judgment and order dated 21.10.1999 propounded by the

learned single Judge in C.I.M.A. Nos. 222, 254, 258 and 261 of 1998. We have heard Mr. B.S. Bali, learned advocate for the appellants, as well

as Mr. R.K. Gupta and Mr. D.R. Khajuria, learned advocates for the respondents, in extenso.

2. The basic facts may be noticed. The victims of the accident were travelling in a vehicle bearing registration No. JK 02-B 579, which skipped off

the road and fell down on 20.4.1995, as a result of which, some of the passengers died while others suffered burn injuries.

3. The claim petitions were preferred before the Motor Accidents Claims Tribunal for compensation and the award came to be passed on

30.4.1998. The owner of the vehicle as well as the insurance company challenged the award by filing a joint appeal on the ground that the

compensation has been determined without applying the principle of law and that the quantum of compensation awarded by the Tribunal is

exorbitant. An argument was also put across before the learned single Judge with regard to the maintainability of the joint appeals by the insurer

and the insured on the ground that insurer cannot challenge the quantum of compensation. The learned single Judge after hearing the rival

contentions of the parties and going through the evidence on record held as under:

So owner is an aggrieved party and the appeal filed by him is competent. So far as appeal by the insurance company is concerned, it will be

competent only if the compensation is found to have been determined arbitrarily by application of wrong multiplier, otherwise it will have to be

dismissed. But this will not affect the appeal filed by the insured.

The compensation awarded by the Claims Tribunal to the victims of the accident was also reduced by the learned single Judge. Aggrieved by the

aforesaid judgment of the learned single Judge, the victims of the accident challenged its correctness, legality and propriety on the ground that the

appeal by insurance company against the award of the Tribunal on merits without having obtained permission u/s 170 of the Motor Vehicles Act is

incompetent. It is settled proposition of law that insurer's right of appeal is limited unless any of the conditions contained in Section 149(2) exist

(that is there has been a breach of a condition of the policy or policy is Void) and such defence is taken in pleadings and pressed before the Claims

Tribunal, the insurer is legally bound to satisfy the award made by the Tribunal and is barred from filing an appeal against such award. The quantum

of compensation is not a ground available to the insurer for the purpose of filing of an appeal, as has been held in Chinnama George and Others

Vs. N.K. Raju and Another, . The contentious issue raised before us is as to whether appeal by insurance company against the award of the

Tribunal on merits without obtaining requisite permission as contemplated u/s 170, is maintainable. We are of the view that in view of the decision

of the Supreme Court in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, and reiterated in case of Oriental Fire and

General Insurance Co. Ltd. Vs. Smt. Nirmala Devi and others, , wherein it has been held that unless permission is obtained u/s 170 of the Motor

Vehicles Act, 1988, the insurance company cannot file appeal against the award of the Tribunal on merits of the claim. In the instant Letters Patent

Appeal, the claim is based purely on merits and, as such, we are of the view that the aforesaid judgment of the Apex Court specifically applies in

the instant case and the appeal is held to be non-maintainable and is liable to be dismissed. In the case of Oriental Insurance Co. Ltd. Vs. Gurdial

Singh and Another, , the High Court of Calcutta took the same view following the aforesaid decision of the Apex Court in the case of Shankarayya

(supra). We do not find any reason to take a different view in the instant case.

4. Another argument put across was that insurance company in joint appeal with owner under the Motor Vehicles Act is also incompetent, unless

one of the grounds specified u/s 149(2) is available to it. Victims who happened to be passengers in the vehicle and sustained serious injuries, as a

result of rash and negligent driving of the bus by the driver, there has been no challenge to the rash and negligent driving. The insurer admitted the

accident and also the insurance of vehicle with the company on the relevant date. The liability of insurer is not disputed. In such event, challenge by

the insurer only on quantum of compensation, the learned single Judge erred in allowing the appeal in reducing the compensation amount, no

approval can be accorded as to the validity of the appeal by the insurer merely by associating the insured.

5. The provision of law cannot be undermined in this way. The real purpose to the provision of law relating to the award of compensation in

respect of accident arising out of use of motor vehicle must be given effect. The court cannot permit the insurer the right to defend or appeal on

grounds not permitted by law by using a backdoor method. Any other interpretation will produce unjust results and open the gates for insurer to

challenge any award. A purposive approach has to be adopted and true object of the Act should be given effect to. The Apex Court, while dealing

with the issue with regard to the filing of an appeal against the quantum of compensation, held that a joint appeal by the insured and insurer cannot

be maintained in case the insurer does not plead any of the grounds contemplated u/s 149(2) of the Motor Vehicles Act. In the aforesaid judgment,

the Apex Court held as under:

The insurer cannot maintain a joint appeal along with the owner or the driver if

defence on any ground u/s 149(2) is not available to it. In that situation joint appeal will be incompetent. It is not enough if the insurer is struck out from the array of the appellants.

In the light of the ratio of the aforesaid judgment, joint appeal by the insurer along with the owner cannot be allowed, being incompetent in such a situation.

6. There existed no right in the insurer to file an appeal against the award of the Claims Tribunal only on quantum of compensation. However, by

the owner, as co-appellant, an appeal was filed which led to the impugned judgment. The impugned judgment does not reflect any grievance of the

owner of the offending bus against the award of the Claims Tribunal. Thus, the insurer by associating the owner in the appeal, when owner is not an

aggrieved person, cannot be allowed to mock at the law, which prohibits the insurer from filing the appeal except on grounds on which it could

defend claims petition. In that view of the matter, the joint appeals by the insurer and the owner are held incompetent.

That being the position, we are, therefore, clearly of the view that the appeals before the learned single Judge against the award on both the counts

were incompetent and not maintainable.

7. In the result, we, therefore, set aside the impugned judgment and order dated 21.10.1999 passed by the learned single Judge and restore that of

the Claims Tribunal. Under the peculiar circumstances, there will be no order as to costs. Accordingly, the appeals are allowed.