
(2007) 12 AP CK 0017
In the Andhra Pradesh High Court
Case No : LPA No. 177 of 1999

Chinnakarasamma and Others

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 03-12-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 110C(2A), 110D, 96(2)
Motor Vehicles Act, 1988 — Section 149(2), 170, 173

Citation : (2008) 1 ALD 801 : (2008) 2 ALT 596 : (2008) 1 APLJ 14

Hon'ble Judges : T. Meena Kumari, J;G. Rohini, J

Bench : Division Bench

Advocate : S. Ravi, for the Appellant; K. Ramakrishna Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This appeal is directed against the judgment of the learned Single Judge in AAO No. 1460 of 1998, under which the learned Single Judge while allowing the appeal preferred by the Insurance Company in part, reduced the compensation awarded by the Motor Accidents Claims Tribunal from Rs. 1,70,000/- to Rs. 70,296/-.

2. The facts in brief are as under:

The appellants herein are the claimants, who filed M.V.O.P. No. 78 of 1987 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Chittoor, claiming a compensation of Rs. 2,58,000/- for the death of one B. Muniappa in a motor accident on 24.7.1986. The said O.P. was contested by the Insurance Company-1st respondent herein as well as the 3rd respondent-owner of the vehicle. After considering the evidence adduced by the parties, both oral and documentary, the Tribunal by award dated 4.10.1988 having held that the death occurred due to the rash and negligent driving on the part of the driver of the vehicle, awarded a compensation of Rs. 1,70,000/- together with future interest at 12% p.a., from the date of the petition till realization.

3. Aggrieved by the same, the Insurance Company filed A.A.O. No. 1460 of 1988 u/s 110-D of the Motor Vehicles Act, 1939. A learned Single Judge of this Court on re-appreciation of the evidence, allowed the appeal in part, thereby reducing the compensation to Rs. 70,296/-. The said judgment is under challenge in this letters patent appeal filed by the claimants.

4. We have heard the learned Counsel for both the parties.

5. The learned Counsel for the appellants primarily contended that the appeal u/s 110-D of the Motor Vehicles Act, 1939, preferred by the Insurance Company itself was not maintainable against the order of the Tribunal, since the Insurance Company was not entitled to file an appeal on merits questioning the quantum of compensation. In support of his submission, the learned Counsel placed reliance upon the decisions of the Supreme Court in *Dama Kothilingam @ Kotilingaiah Vs. Joint Collector and Another*, and *United India Insurance Co. Ltd. Vs. Jyotsnaben Sudhirbhai Patel and Others*, .

6. In *National Insurance Co. Ltd. v. Nicolletta Rohtagi* (supra), a 3 Judge Bench of the Supreme Court while considering the scope and object of Sections 149(2), 170 and 173 of the Motor Vehicles Act, 1988 held as under:

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.

7. The ratio laid down in the above decision was followed in *United India Insurance Co. Ltd. v. Jyotsnaben Sudhirbhai Patel* case (supra).

8. In the instant case, since the accident took place on 24.7.1986, the provisions of the Motor Vehicles Act, 1939 are applicable and therefore the Appeal (AAO 1460 of 1998) was preferred u/s 110-D of the Motor Vehicles Act, 1939.

9. However, the ratio laid down in the above decisions is squarely applicable since Section 149(2) of the Motor Vehicles Act, 1988 corresponds to Section 96(2) of the repealed Act of 1939. Similarly, Section 170 of the Motor Vehicles Act, 1988 corresponds to Section 110-C(2A) of the Motor Vehicles Act, 1939.

Hence, even under the repealed Act of 1939 only statutory defences were available to the Insurer except where leave was granted by the Tribunal on being satisfied that there was collusion between the claimant and the insured or where the insured failed to contest the claim.

10. In the instant case, admittedly, OP No. 78 of 1987 was contested by the owner of the vehicle (insured) and there was absolutely no allegation of collusion between the claimant and the insured. It is also clear that the Insurance Company never sought leave u/s 110-C(2A) of the Motor Vehicles Act, 1939 (corresponding to Section 170) of the Motor Vehicles Act, 1988.

11. In the circumstances, we are of the opinion that it was not open to the Insurance Company to file an appeal questioning the quantum of compensation awarded in OP No. 78 of 1987.

11.1 Even on merits, we are of the opinion that the conclusion of the Tribunal that the loss of annual dependency was Rs. 18,000/- and that multiplier "10" was applicable, was on proper appreciation of the evidence on record and there is no justifiable reason to interfere with the said conclusion. Hence, the reduction of compensation awarded by the Tribunal was unwarranted.

11.2 Accordingly, the appeal is allowed and the judgment and decree in AAO No. 1460 of 1998 is set aside. No costs.