(2010) 01 CHH CK 0052

In the Chhattisgarh High Court

Case No : Misc. Appeal (C) No. 685 of 2009

Divisional Manager, Oriental Insu. Co. Ltd. APPELLANT

Vs

Shashwat Soni and Others RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 110CC, 149(2), 170, 171

Citation : (2011) 2 TAC 464

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Judgement

N.K. Agarwal, J.—The instant appeal is directed by the appellant/insurance company challenging the award dated 22.10.2008, passed by the IInd Additional Motor Accidents Claims Tribunal, Durg (for short ''the Tribunal'') in claim case No. 42/08, whereby and whereunder an amount of Rs. 1,45,502/ - has been awarded in favour of the applicant/claimant alongwith the interest @ 6 percent per annum if award is satisfied within a period of two months, and in default, @ 8 percent per annum, for the injuries sustained by him in the said accident and as against the respondent including the appellant/insurance company.

2. Indisputably, the appellant/insurance company has not obtained any permission u/s 170 of Motor Vehicles, Act, 1988 (for short ''MV Act'') from the Tribunal in order to contest the claim on the grounds which are available to the person against whom the claim has been made.

3. In this appeal, the appellant insurance company wants to assail the quantum of compensation and finding regarding negligence of the offending vehicle.

4. Section 170 of the MV Act reads as under:

170. Impleading insurer in certain cases- Where in the course of any inquiry, the Claims Tribunal is satisfied that:

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub- Section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

5. The aforesaid provision provides that in course of inquiry of a claim if the Tribunal is satisfied that there is a collusion between the claimant and the insured or the insured fails to contest the claim, the Tribunal for reasons to be recorded in writing, may direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

6. The Supreme Court, in its various pronouncement has taken a consistent view that the insurer has no right to file an appeal to challenge the quantum of compensation or findings of the Tribunal as regards the negligence or contributory negligence of the offending vehicle.

7. The Supreme Court in case of National Insurance Co. Ltd. Chandigarh v. Nicolletta Rohtagi and Ors.1 has observed in para 31 as under:

31. We have already held that unless the conditions precedent specified in Section 170 of 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 ground 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 for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in Sub-sections (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.

8. In view of the above, there is no iota of doubt in my mind that the instant

appeal filed by the insurance company challenging the amount of compensation and/or negligence of the offending vehicle, is not maintainable since no permission has been obtained u/s 170 of the MV Act. However, the contention raised by Shri Sudhir Agrawal, learned Counsel appearing for the appellant/ insurance company with regard to penal interest awarded by the Tribunal cannot be rejected. The Tribunal has awarded interest @ 6 percent per annum if award is satisfied within a period of two months, and in default, awarded interest @ 8 percent per annum.

9. As per Section 171 of the MV Act, the claims Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid on such rate and from such date not earlier than the date of making the claim as it may satisfy in this behalf.

10. The aforesaid provision confers a discretion on the Tribunal to award interest. Once the discretion has been exercised by the Tribunal to award simple interest at a particular rate and from a particular date, there is no scope for enhancement of rate of interest for default in payment of compensation.

11. The Supreme Court in case of National Insurance Co. Ltd. v. Keshav Bahadur and Ors.2 has observed in para 13 as under:

13. Though Section 110-CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.

12. In view of the above, it is crystal clear that the Tribunal has wrongly awarded the penal interest. The same deserves to be and is hereby set aside.

13. In the result, the appeal preferred by the insurance company is partly allowed to the above extent. The direction of Tribunal to pay interest @ 8 percent per annum if the amount is not paid within a period of two months, is set aside. The remaining part of the award is upheld. No order asto costs.

