

(1986) 07 GAU CK 0005
In the Gauhati High Court
Case No : M.A. (F) No. 39 of 1976

Hindusthan General Insurance Society Ltd.

APPELLANT

Vs

Zakia Rasul and Another

RESPONDENT

Date of Decision : 08-07-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110C(2A), 96(2)

Citation : (1987) ACJ 992 : (1988) 64 CompCas 828

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : N. Chakravarty, for the Appellant; D.P. Chaliha, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansarta, J.—Respondent No. 1 was injured in an accident which had taken place on September 9, 1971, when she was travelling in an autorickshaw. She claimed an amount of Rs. 97,000 as compensation. The learned member of the Motor Accidents Claims Tribunal, however, awarded a sum of Rs. 25,000 out of which the appellant was ordered to pay a sum of Rs. 10,000 and the balance amount was made payable by the owner of the vehicle. Feeling aggrieved, the insurance company has filed this appeal.

2. At one stage, Shri N. Chakravarty, learned counsel for the appellant, submitted that the liability of the appellant was to the extent of Rs. 5,000 only. This submission was advanced by relying on Section 95(2)(b)(ii)(4) of the Motor Vehicles Act, 1939. This provision has stated that a sum of Rs. 10,000 for each individual passenger can be awarded only when the vehicle is a motor cab. It was submitted by Shri Chakravarty that the limit of Rs. 10,000 did not apply in the present case as an autorickshaw cannot be taken as a motor cab. Shri D.P. Chaliha, appearing for respondent No. 1, however, submitted on the strength of S.A. Rickshaw Sahakari Sangh v. Director of Transport AIR 1964 Bom 402, that an autorickshaw falls within the definition of "motor cab". After this decision was cited, Shri Chakravarty was fair in not pressing his submission that more than

Rs. 5,000 could not have been awarded against the insurance company.

3. The main submission ultimately pressed before me by Shri Chakravarty was that the quantum of compensation was high in the present case inasmuch as respondent No. 1 had received some minor injuries only for which the award of Rs. 25,000 was not just and proper. Shri Chaliha raised an objection to this submission by stating that the appellant could not assail the quantum of compensation. According to learned counsel, the defences which are open to the insurance company are only those which have been specified in Section 96(2) of the Act. To support this contention, Shri Chaliha referred to *The Howrah Insurance Co. Ltd. Vs. Shri Yuktinath Jha and Others*, . A perusal of this judgment shows that it had not referred to Section 110C(2A) of the Act which allows an insurer, under certain circumstances, to contest the case on all or any of the grounds available to an owner of the vehicle. So, this decision cannot assist the respondents. Learned counsel also referred to *The United India Fire and General Insurance Company, Limited (Unit), The Madras Motor and General Insurance Company Limited Vs. Parvathy and Another*, , in which the mind was applied to the aforesaid provision and it was held that one exception to what has been laid down in Section 96(2) has been contained in Section 110C(2A) of the Act.

4. Let it be seen whether, in the present case, the requirements of Section 110C(2A) of the Act were satisfied. This section reads :

" (2A) Where in the course of any enquiry, the Claims Tribunal is satisfied that-

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

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

it may, for reasons to be recorded by it 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 the right to contest the claims on all or any of the grounds that are available to the person against whom the claim has been made. "

A reading of the aforesaid provision makes it clear that before the insurer is allowed to contest the claim on all or any of the grounds that are available to the insured, there must be a specific order of the Claims Tribunal wherein reasons have to be recorded as to why the insurer was being allowed to be impleaded as a party. It deserves to be mentioned that it is only an insurer impleaded as a party following a specific order of the Tribunal which can take all the defences available to an owner. In the present case, there is no order of the Claims Tribunal impleading the appellant as a party. Shri Chakravarty contended that the fact that the appellant was allowed to cross-examine the claimant's witnesses would show that the learned Tribunal had permitted the appellant to contest the case on all the grounds. I would hesitate to accept this submission inasmuch as

the aforesaid provision requires the Claims Tribunal to give reasons for impleading the insurer as a party which are wanting in the present case. The importance of recording reasons lies in the fact that the same enables the higher courts to know if the insurer was impleaded for good and cogent reasons. As the insurer impleaded pursuant to a specific order is clothed with greater power of defence, the reasons for impleading it as a party must be made known.

5. Even if the appellant were to be allowed to challenge the quantum of compensation, it cannot be held that compensation ought to have been below Rs. 10,000, as was urged by Shri Chakravarty. The discussion of issue No. 3 (which is relatable, inter alia, to the amount of compensation) shows that the learned Claims Tribunal had applied its mind to the broad heads under which the claim could be granted and after giving its reasons, had awarded a sum of Rs. 25,000. Even if it were assumed that the award of Rs. 25,000 was on the high side, it cannot be held that Rs. 10,000 could not have been awarded to respondent No. 1 and, even if the award would have been Rs. 10,000 only, the insurer could have been asked to pay the entire amount.

6. Shri Chakravarty ultimately pleaded, in passing, for waiving the interest made payable by the learned Tribunal. As interest has been awarded only at 6% per annum, no reduction in this regard is called for.

7. In view of what has been stated above, no relief can be granted to the appellant. The appeal is, therefore, dismissed.