
(2002) 03 BOM CK 0054

In the Bombay High Court

Case No : C.A.F. No. 5211 of 2001 in First Appeal No. 707

Jayshree Rajendra Chavan and Others

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 170, 173

Citation : (2002) 6 BomCR 249 : (2002) 3 MhLj 843

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : P.B. Shah, for the Appellant; S.R. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the advocates for the parties. Rule made returnable forthwith by the consent. This is an application for dismissal of the appeal filed by the respondent on the ground that the Insurance company is not entitled to file the appeal on merits of the claim which was awarded by the Motor Accident Claims Tribunal. In view of the provisions contained in Section 170 of the Motor Vehicles Act, 1988 (hereinafter called as "the said Act") placing reliance in the decision of the Apex Court in the matter of Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, the learned advocate for the applicants submitted that the respondent being the Insurance company and there being no appeal filed either by the owner or the driver of the vehicle, considering the provisions contained in Section 170 of the said Act and the said ruling of the Apex Court, the appeal is clearly not maintainable and, therefore, should be dismissed in limine. On the other hand, the learned advocate appearing for the opponent (the original appellant) placing reliance in the decision of the Apex Court in the matter of United India Insurance Co. Ltd. v. Bhushan Sachdeva and Ors. reported in Judgment Today 2000(1) S.C. 207 has submitted that Section 173 of the said Act clearly entitles aggrieved party to approach the appellate court against the award passed by the Motor Accident

Claims Tribunal. The appeal is continuation of the original proceedings and undisputedly, the opponent, i.e. the original appellant was the party before the Tribunal. It is also a matter of record that the owner and driver have failed to contest the proceedings after passing of the award and it cannot be said that the appellant/insurance company is not entitled to file the appeal.

2. By award dated 16-1-2001 in Motor Accident Claims Petition No. 514 of 1995 the tribunal has allowed the application filed by the respondents and thereby the owner, driver and the insurance company has been held to be jointly and severally liable to pay the compensation to the tune of Rs. 4,67,000/- @ 10% p. a. interest thereon and from the date of registration of the application, till the date of the payment. It is an undisputed fact that neither the owner nor the driver has filed any appeal against the said award of the Motor Accident Claims Tribunal. As the award stands, therefore, the same is executable against the insurance company, as well.

3. The Apex Court in Shankarayya's case considering the provisions contained in Section 170 of the said Act has held that the insurance company when impleaded as a party, it can be permitted by the court to contest the proceedings on merits if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain order in writing from the Tribunal and it should be a reasoned order by the Tribunal. The Apex Court further has held that unless procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence. Considering the fact that the claimants in the said case had joined the insurance company as the party-respondent in the claim petition only with a view to thrust the statutory liability, on the insurance company on account of the contract of insurance, and the impleadment was not by an order of the court permitting the insurance company to avail of a larger defence on merits after being satisfied about two conditions mentioned in Section 170 of the said Act, it was held that in the facts of that case, the insurance company was not entitled to file the appeal on merits of the claim which was awarded by the Tribunal. In other words, in the absence of permission to the insurance company to avail a larger defence on merits being granted by the court after being satisfied about two conditions mentioned in Section 170, the insurance company as a matter of right would not be entitled to file an appeal on merits of the claim against the award of the Tribunal. It is pertinent to note that the decision of the Apex Court in Bhushan Sachdeva's case was squarely in relation to the entitlement of the insurance company to avail the larger defence on merits in accordance with the provisions contained in Section 170 of the said Act and the decision regarding the entitlement of the insurance company to file an appeal was in view of the said restrictions imposed upon the insurance company u/s 170 of the said Act.

4. The Apex Court in Bhushan Sachdeva's case after considering the scope of Section 170 as well as of Section 173 of the said Act has held that "hub of the section is that the right of appeal is conferred on "any person aggrieved by an

award of a claims tribunal." When can an insurance company be aggrieved with the award passed by a claims tribunal to entitle it to invoke the right in Section 173 of the Act? The permissible contours of the involvement of the insurance company in the claims preferred before the tribunals can be discerned from Section 168 of the Act. That section enjoins on the claims tribunal to hold an inquiry on receipt of an application for compensation. There is a statutory compulsion on the tribunal that such inquiry could be conducted only "after giving notice to the application to the insurer", and to the parties and also only after giving an opportunity to the insurer as well as the parties, of being heard. After holding such inquiry, the claims tribunal has no jurisdiction to pass an award arbitrarily or as it likes, but only "an award determining the amount of compensation which appears to it to be just". The tribunal shall specify in the award "the amount which shall be paid by the insurer or the owner or the driver of the vehicle involved in the accident or by all or any of them as the case may be."

5. Considering the provisions of law contained in Section 168 read with Section 170 of the said Act and dealing with the issue as to whether the insurance company should not have any grievance at all even in a case where the award appears to be unjust to that company, the Apex Court has proceeded to analyse the Section 173 of the said Act and has ruled that the insurance company can fall within the ambit of the words "any person aggrieved by an award of a claims tribunal" as used in Section 173(1) of the Act, when the insured failed to file any appeal against the award. The Apex Court also considered the grounds enumerated in Section 149(2) of the said Act and eventualities enumerated thereunder like those of possibility of collusion between the claimant and the insured, and failure on the part of the insured to contest the claim.

6. Referring to the expression "failed to contest" the Apex Court has held that the said expression must be interpreted in a realistic manner and right to contest would include the right to contest by filing the appeal against the award. The Apex Court ultimately has held that it is open to the insurance company to invoke the right u/s 173 of the said Act once the insured fails to file the appeal against the award passed against him. The Apex Court has further observed that if it is held that no insurance company should feel aggrieved even if the award is seemingly unjust and that such awarded amount should go out of public fund, it is the public interest which suffers and as such there is nothing in Section 173 or in the other relevant provisions of the said section which debars the insurance company to resort to the remedy of appeal when it knows that the award is unjust.

7. In the case in hand as already discussed above, it is not in dispute that the award passed against the owner and driver has become final in the absence any challenge by them to said award. The appeal has only been preferred by the Insurance company. Considering the decision of the Apex Court in Bhushan Sachdeva's case, it is apparent that the insurance company is entitled to contest

the claim even on merits on account of failure on the part of the owner and driver to contest the matter after passing of the award. Therefore, it cannot be said that no appeal lies on merit at the instance of the insurance company. In the circumstance, it cannot be said that appeal can be dismissed in limine at this stage.

8. In the result, therefore, the application tiled by the applicants is dismissed. Rule is discharged with no order as to costs.