
(1996) 09 AP CK 0055

In the Andhra Pradesh High Court

Case No : L.P.A. No. 426 of 1985 & Letters Patent Appeal No. 426 of 1985

Konidala Jaya Bharati and Another

APPELLANT

Vs

A. Chokkalingam and Another

RESPONDENT

Date of Decision : 23-09-1996

Acts Referred:

Constitution of India, 1950 — Article 12

Insurance Act, 1938 — Section 7

Motor Vehicles Act, 1988 — Section 173

Citation : (1998) ACJ 1363

Hon'ble Judges : Lingaraja Rath, J; B.S. Raikote, J

Bench : Division Bench

Advocate : M.R.K. Choudhary and K. Bathi Reddy, for the Appellant; S.A. Razak and S.V.R.S. Somayajulu, for the Respondent

Final Decision : Dismissed

Judgement

Lingaraja Rath, J.—I have gone through the judgment prepared by my learned brother B.S. Raikote, J., painstakingly. While I partly agree with my learned brother's views of the owner of the vehicle being a person aggrieved in the circumstances, yet I would make some independent considerations as I found myself unable to agree with all the discussions made.

2. The substantial question arising for consideration is whether in terms of Section 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), the owner of the vehicle, when the award amount is covered by the policy, can be regarded as a "person aggrieved" to maintain an appeal in the High Court. It is not in doubt that the owner is a person aggrieved when the award amount is more than that covered in the policy. Similarly, when the award amount is less than the policy amount and the claimant prefers appeal claiming enhancement but the owner has preferred no appeal, the owner is a necessary respondent in whose presence the matter has to be decided and as such, in such a situation the owner would not necessarily be a person aggrieved. Likewise, if

the insurance company alone prefers an appeal but the owner does not, yet the appeal would be decided only in presence of the owner as a respondent and the success of the appeal would necessarily enure to the benefit of the owner. There is, hence, in such a case, no question of the award given by the Tribunal becoming final against the owner but modified against the insurer so that the Tribunal's award would be independently against the owner. However, if in making the award the Tribunal has saddled the owner as being independently liable for any amount and the insurer for the other amount, an appeal by the insurer against that part of the award would not come to the benefit of the owner, but then it would be a case where the award amount would not be covered by the policy.

3. Yet, in spite of such considerations, I am strongly persuaded to hold that even in the limited case where the award is covered by the policy, the owner would still be an aggrieved person entitled to maintain an appeal. In any case of an accident claim the first requirement is a verdict of rash and negligent driving of the vehicle in respect of which action the compensation is claimed. It is a case of either the driver or the owner himself as being guilty of rash and negligent driving. Such a finding in itself casts a stigma on the owner of his vehicle being rashly and negligently driven and may have adverse effect on him. He would hence undoubtedly be an aggrieved person to maintain an appeal at least to challenge the finding to absolve himself of the indictment. To that extent an appeal is certainly maintainable.

4. Next I go to the question as to whether once the High Court concurs with the finding of there having been rash and negligent driving, whether it can still go into the further question of the compensation having been excessive, at the instance of the owner, even if the award amount is covered by the policy and the insurance company has the liability to satisfy it. The argument is that the Court must stop after confirming the finding of the rash and negligent driving and dismiss the appeal holding any challenge to the quantum of compensation in such a case as not being open to be made. Such a contention is not acceptable for various reasons. It is well known that the owner of a vehicle earns a rebate on the premium payable in respect of the vehicles for which no compensation has been paid by the insurer. If the owner is not entitled to maintain an appeal as his liability is met by the insurer, then he would be also disentitled to challenge the compensation and would lose the rebate due to him. He would, for that reason, be a person aggrieved and entitled to prefer an appeal. Similarly, another aspect considered by my learned brother has also an important bearing on the question. In a case where the Tribunal has applied a wrong multiplier in determining the compensation for which the amount payable has become more, though not exceeding the policy amount, it would yet remain unassailable as on the one hand, the insurance company cannot appeal against it unless grounds u/s 96(2) of the Act are available to it, and on the other hand, the owner would be incompetent to appeal as the amount does not exceed his insurance coverage. The logical conclusion of such a view would be that even if the High Court in an

appeal before it finds, even while confirming the finding of rash and negligent driving, that the amount of the award has not been correctly determined, it would be yet powerless to interfere since no appeal in respect of that part of the award is maintainable. That would certainly be an absurd position and would be against public policy. The insurance companies, after they are nationalised, are not only State under Article 12 of the Constitution of India but also their activities, commercial as they are, are carried on by the State. It would be against public policy to allow an award to stand in spite of its apparent mistake only on the ground that an appeal is not maintainable. It could never be the intention of the legislature to protect such an untenable position and hence the words "person aggrieved" have to be interpreted, in the context of Section 110-D of the Act, to include within its ambit an owner even when he does not suffer any pecuniary injury because of the award. There is also another situation already referred to by my learned brother to appreciate the meaning of the words. No doubt, Section 96(1) of the Act makes it mandatory for the insurer to pay the claimant the benefit of the decree to the extent the amount is covered by the policy and makes it a deemed judgment-debtor, but where the insurance company for some reason does not specify the amount and the claimant finds it more convenient to proceed against the owner for realisation of the dues, the owner, notwithstanding the fact that he can get the money back from the insurer, yet would have a liability to discharge the debt and hence would become a person aggrieved.

5. All these considerations persuade me not to agree with the appellants contention.

6. In the result, we dismiss the appeal.

B.S. Raikote, J.

7. The present appellants who were the claimants before the Motor Accidents Claims Tribunal, Chittoor (for short "Tribunal") in O.P. No. 338 of 1983 have preferred this Letters Patent Appeal being aggrieved by the judgment and order of the learned single Judge dated 17.10.1985 passed in C.M.A. No. 801 of 1984. By the said judgment the learned single Judge modified the judgment and award of the Tribunal regarding the loss of dependency. The Tribunal had awarded Rs. 49,000/- and the same was reduced to Rs. 29,000/- and the other part of the award regarding the funeral and other expenses at Rs. 4,000/- was maintained. Thus, the learned single Judge awarded a total compensation of Rs. 29,000/- as against the total compensation awarded by the Tribunal at Rs. 49,000/-. In this appeal the main ground which the learned Counsel urged was regarding the maintainability of the joint appeal before the learned single Judge by the owner of the vehicle and also by the insurance company. He contended that the owner and the insurance company could not have joined together to file a joint appeal before the learned single Judge and thus the said appeal was not maintainable. When the appeal itself was not maintainable the learned single Judge could not have modified the judgment and award of the Tribunal. Regarding the

compensation awarded by the learned single Judge, the same is not challenged by the learned Counsel for the appellant. However, the learned Counsel for the respondents supported the judgment and decree of the learned single Judge.

8. In order to appreciate the rival contentions it is necessary to note few facts of the case. On 4.8.1983 at about 4.45 p.m. when the deceased was going along with his friend on a bicycle near Brahmamgari Temple at Thiruchanur Road, a bus bearing No. AAC 6606 being driven in rash and negligent manner came from the side of Thiruchanur Road. Seeing the same the deceased stopped the bicycle on the edge of the road. In the meanwhile the bus came and hit against the deceased. As a result, the deceased received grievous injuries. Immediately thereafter he was removed to S.V.R.R. Hospital, Tirupati. The deceased also was advised to go over to Madras for treatment. On such advice the deceased was removed to Madras for treatment. On 5.8.1983 at about 1.00 a.m. the deceased succumbed to the injuries. The accident was reported to the Station House Officer, Tirupati who registered a case in Crime No. 26 of 1983 u/s 304-A (sic.) of Indian Penal Code and the case was pending. Meanwhile, this claim petition was filed claiming a total compensation of Rs. 70,000/- together with interest and cost. The claimants are the parents of the deceased.

9. At the time of the accident the deceased was a boy of 17 years and he was studying in 10th class in Tirupati and he was a brilliant boy with a very bright future. It is alleged that the accident was caused due to rash and negligent driving by the driver of the bus belonging to the owner, A. Chokkalingam. It was insured with the New India Assurance Co. Ltd.

10. The Tribunal framed the following issues:

- (1) Whether the accident in which the deceased died was due to the rash and negligent driving of the vehicle bearing No. ACC 6606 by its driver?
- (2) Whether the petitioners are entitled for any compensation, if so, to what amount?
- (3) To what relief?

On the claimants side Jaya Bharati, PW 1, (petitioner No. 1) and T.V.V. Chakravarthy, PW 2 were examined and the documents at Exhs. A-1 and A-2 to A-6 were got marked. On the side of the respondents no one was examined and no document was marked. Considering the evidence on record the Tribunal held that the claimants came from middle class family and the deceased was expected to earn and help the parents after 4 or 5 years from the date on which the accident had occurred. The deceased was the eldest son of his parents. Under these circumstances, the appellants naturally would have nourished a big expectation on the deceased. The deceased would have been of immense help to his parents. Taking these factors into consideration he awarded a sum of Rs. 45,000/- towards the loss of dependency and another Rs. 2,000/- towards pain and suffering and he also awarded conventional damages of Rs. 2,000/- towards

transport charges, funeral expenses, etc. Thus, he awarded total compensation at Rs. 49,000/-. The learned single Judge in the appeal found that even assuming that the deceased was a brilliant boy yet he would have spent more time for his education and he would have started earning at 23 or 24 years of his age. During that period some amount would have been spent on him. He further observed that a question whether he would have been able to get admission in the courses of his choice was again a question of conjecture. What employment he would have got and what salary he would have earned would also be a matter of conjecture. However, assuming that the deceased would have earned Rs. 500/- per month and his 20 per cent contribution to the dependent parents would come to Rs. 100/- per month. Thus, he computed the annual dependency at Rs. 1,200/-. Taking the period of dependency at 30 years he applied multiplier of 14 and thus computed the compensation to be awarded at Rs. 16,800/-. The net capital amount also was worked out at 10 per cent which would be less than Rs. 1,200/- per annum. On the basis of this kind of calculation he fixed the compensation at Rs. 25,000/-. He also took into consideration that even no fault liability would not be less than Rs. 15,000/-. Having taken the totality of the circumstances he awarded Rs. 25,000/- towards loss of dependency in place of Rs. 45,000/- awarded by the Tribunal. With this modification the appeal of the owner of the vehicle and insurance company was partly allowed. Therefore, the claimants have filed the present appeal.

11. As we have already noted above the only point that is urged by the learned Counsel for the appellants is that the learned single Judge could not have entertained the joint appeal. He elaborated his argument contending that the owner could not have preferred the appeal because the amount awarded was covered by the insurance policy and the insurance company could not have filed the appeal raising the grounds not permissible u/s 96(2) of the Motor Vehicles Act, 1939 (for short "the Act"). At any rate, he submitted that, if the owner and the insurance company were to join as the appellants in the case, it would be a case of misjoinder of cause of action. Thus, he contended that the joint appeal as filed by the present respondents should have been dismissed by the learned single Judge. On the other hand, the learned Counsel appearing for the respondents submitted that such a joint appeal was maintainable. He submitted that the owner could prefer an appeal as he is an aggrieved person and the insurance company also could prefer an appeal as an aggrieved person. When they could have filed an appeal of their own separately, there is no prohibition if they had preferred a joint appeal. Therefore, such a joint appeal filed was maintainable. However, the learned Counsel for the appellants relied upon certain decisions in *Sushila v. Succha Singh* 1989 ACJ 226; *Narendra Kumar and Another Vs. Vares Hassan Farooqui and Others*, ; *Kantilal and Bros. v. Ramarani Debi* 1980 ACJ 501; and *United India Fire & Genl. Ins. Co. Ltd. v. Gulab Chandra Gupta* 1985 ACJ 245 in support of his contentions. On the basis of the arguments and counter arguments the following points arise for our consideration:

(1) Whether the owner of the vehicle and the insurance company can maintain a

joint appeal.

(2) Whether the owner can be said to be a person aggrieved if the compensation awarded is covered by the insurance policy and accordingly the insurance company is made liable.

12. Taking the first point for consideration, we have to see whether joint appeal by the owner and the insurance company is maintainable. Since the accident in question in this case has occurred on 4.8.1983 when the old Act was in force, we are examining this case with reference to that Act. It cannot be disputed that any person aggrieved by the judgment and award of the Tribunal can prefer an appeal u/s 110-D of the Act (under Motor Vehicles Act, 1988, it is Section 173), within 90 days from the date of the award to the High Court. Under Clause (2) of the said section no appeal would lie against any award of the Tribunal if the amount in dispute is less than Rs. 2,000/-. The word "aggrieved person" has not been defined in the Act. Therefore, we have to take the word "aggrieved person" in the sense generally it is accepted.

13. In fact in more than one case the Supreme Court had an occasion to consider the concept of an "aggrieved person". "The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At the best, its features can be described in a broad tentative manner." Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, .

14. In the decision in Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, , the Hon"ble Supreme Court clarified the concept of an "aggrieved person". To quote:

(27) Where a right of appeal to Courts against an administrative or judicial decision is created by the statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words

"person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests".

In the light of the principles enunciated by the Supreme Court, now we have to examine in the context of the Act whether the owner of the vehicle and the insurance company are "aggrieved persons" or not.

A person is an "aggrieved person" if the decision is adverse to him or a legal burden is imposed on him or the judgment and award affects his property rights, therefore, it is necessary to get the said judgment and decree set aside by filing an appeal. In the instant case, the award that is passed by the Tribunal is as under:

In the result, an award for Rs. 49,000 is passed in favour of the petitioners and against the respondents with joint and several liability. They are also entitled to an interest at the rate of 6 per cent from the date of the petition till the date of realisation on the amount of compensation awarded besides proportionate costs. The remaining claim is dismissed, but without costs. The amount awarded is equally apportioned between the two parties.

(Emphasis supplied)

From this award it is clear that the legal liability on the owner and the insurance company is joint and several. In case of a default in payment of the award amount, the claimants would be entitled to proceed against the owner of the vehicle or against the insurance company or against both of them. In such circumstances, the owner is an "aggrieved person" because he has been saddled with the liability. The insurance company also is aggrieved person because that legal liability of the owner is to be indemnified under the policy of the insurance company. Moreover, it is also open to the claimants to proceed against the insurance company. In this view of the matter, prima facie, both the owner of the vehicle as well as the insurance company are aggrieved persons individually. Therefore, the owner of the vehicle could prefer an appeal and the insurance company also could prefer its own appeal. But, so far as the insurance company is concerned, such an appeal would be restricted to the extent of the defences open to it u/s 96(2) of the Act (old). So far as the owner is concerned, he can prefer an appeal without any such restrictions. Thus, if they could prefer their own appeal u/s 110-D of the Act separately they could also prefer a joint appeal. In case, if they prefer a joint appeal, so far as the insurance company is concerned, as an appellant, its grievance can be considered to the extent provided by Section 96(2) of the old Act. But, in the appeal filed by the owner all issues could be considered including the extent of liability that can be fixed on the insurance company. At any rate a joint appeal is maintainable, but the appeal of the insurance company if the conditions provided by Section 96(2) are not complied with that part of the appeal of the insurance company may be liable to be dismissed. But, the appeal in so far as the owner is concerned continues to be maintainable with regard to the other issues regarding the rash and negligent

driving, the quantum of compensation, etc. Therefore, only because a joint appeal is preferred such a joint appeal cannot be dismissed in limine.

15. To go further deep into the matter, we have to notice few Sections relevant for the purpose of discussions regarding the point on hand. Section 94 of the Act makes it obligatory on the user of the vehicle by directing him that such persons shall not use the vehicle in public place, unless, there is in relation to the use of the vehicle, a policy of insurance complying with the requirements of Chapter 8 of the Act. Section 95 provides certain statutory requirements compulsory and optional as to the liability arising out of the policy taken, in case of accident in the course of use of such vehicle. Section 95(5) provides that:

Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this Section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

(Emphasis supplied)

Under Section 95-AA in addition to the deposit required to be made u/s 7 of the Insurance Act, 1938, every insurer shall deposit with the Reserve Bank of India or State Bank of India a sum of Rs. 30,000/- as security for the due discharge of any liability covered by a policy and such sum shall not be susceptible of any assignment or a charge and it shall not be liable for attachment in any execution of any decree except meeting the claim arising in respect of the policy of insurance issued to the insured. In case the insurer goes into litigation the Tribunal may direct the payment of such compensation from out of such a deposit provided under Clause (1). Section 96(1) further directs that:

96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.-(1) If, after a certificate of insurance has been issued under Sub-section (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this Section, pay to the person, entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(Emphasis supplied)

Clause (4) of Section 96 further provides that if the insurer pays any amount in excess of the amount awarded by a Court such insurer is entitled to recover the same from the insured. From these provisions it is clear that the relationship

between the insurer and the insured is based on a contract of indemnity. Moreover Section 110-B of the Act further provides that:

110-B. Award of the Claims Tribunal.-On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 109-B may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

From this Section also it further follows that the liability of the compensation may be apportioned amongst the judgment-debtors or any of them may be made liable jointly. If the insurer alone is made liable to pay the compensation, which situation is possible in view of the provisions of Section 96(1), the insurance company alone would be a person aggrieved, and if the insurance company and the owner are made liable for different extent of the compensation amount, which situation also is possible when the policy provides a limited extent lesser than the amount awarded, in that event both would be aggrieved. If they are made jointly and severally liable then all of them would be aggrieved for the purpose of preferring an appeal in terms of Section 110-D of the Act, including the driver. This appears to be the scheme of the Act. However, so far as the insurance company is concerned its defences are only those as specified u/s 96(2) and no other ground. Moreover, as per Section 110-C (2-A), if there is a collusion between the claimants and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim, the Tribunal may permit the insurance company to be impleaded as a party and contest the claim on all or any of the grounds that are available to the insured. Even there may be a condition in the policy, thereby, insurer may reserve the right to defend on behalf of the insured. In such a case if the award is passed the insurer may prefer an appeal u/s 110-D raising the grounds available u/s 96(2) and also on other grounds available to the insured. From these provisions, it is clear that contract of insurance is nothing but a contract of indemnity. Suppose, if the claim against the owner is barred by limitation or the owner is not liable because there was no rash and negligent driving by the driver of the vehicle, the insurance company would not be liable. In fact, this Court in a decision in *B. Ramaswamy v. B. Satyanarayana* AIR 1958 AP 309, ruled that whenever the claim against the owner was barred by limitation the suit against the insurance company alone could not be maintained. A similar question also came up before the High Court of Madras in a decision in *Rajappa and Others Vs. Andalammal and Others*, . The issue in the latter case was whether a claim could be instituted against the insurance company without making the owner a party. Rejecting the plea that such a suit against the insurance company lies, the High Court of Madras observed as under:

(9) The main point that has to be kept in view in this is that after a decree is passed against the assured, the insurer that is the insurance company is bound to satisfy the decree unless it is otherwise made ineffective. A further point to be noticed is that so far as the Motor Vehicles Act is concerned, it does not contemplate a decree being passed against the insurance company and it will not be correct to say that the injured person could proceed against the insurance company alone for enforcing the third party risk undertaken by the company, leaving out the assured or his heirs and legal representatives, and without seeking to enforce his remedies against the assured whose vehicle and whose employees were responsible for the accident and damage suffered by the passengers. In this view, it does not appear to be correct on the part of the learned city civil Court Judge to have held in the course of his judgment that the plaintiffs should proceed against the insurance company alone in order to enforce their claim for damages without seeking the legal representatives of the deceased first defendant to be brought on record. Though certain rights and privileges are given to the insurance company, the insurance company is not made strictly liable to the plaintiffs or the passengers who might be injured in a motor accident unless and until there is a decree passed against the owner of the vehicle who is really the assured person under the Motor Vehicles Act or in his absence against his legal representatives or executors or administrators as the case may be.

This Court also in a decision in *Magadri Satyanarayana Vs. B. Jayaramarao and others*, , held that an appeal against the insurer without impleading the owner and the driver was not maintainable. From the judicial pronouncements of this Court and other Courts it is clear that it is the owner of the vehicle vicariously, for the acts of the driver, would be primarily liable to a third party and on the basis of the insurance policy taken by the owner such a liability is passed on to an insurer. There may be a case as contemplated by Section 95-AA(3)(ii) that the insurer may go into liquidation. In such a case the claimants can recover the compensation from the amount deposited u/s 95-AA(1). According to me such a compensation can also be claimed from the owner of the vehicle who in turn may claim reimbursement from the insurer on the basis of the policy, subject to the provisions of the Act and the law applicable to the facts of the case. Therefore, from this position of law, it is clear that it is the owner who is primarily liable for the compensation but the insurance company takes such liability on the basis of the policy, as indemnifier for and on behalf of such owner. Therefore, the owner is aggrieved person primarily.

16. In the instant case by the impugned award it is clear that the award is passed against the owner and the insurance company with joint and several liability. Therefore, both of them are aggrieved and if they choose to file a joint appeal such a joint appeal would be maintainable.

17. The next point we have to consider is whether the owner can be said to be aggrieved person in case the amount awarded is covered by the insurance policy.

At the outset, it can be said that since in this case the award is one of joint and several liability the owner is an aggrieved person, whether the amount awarded is covered by the insurance policy or not, it is still open to the owner to challenge the award on the ground that the findings as to rash and negligent driving given by the Tribunal were in error and also contend that the quantification of the compensation arrived at was based on erroneous principles. Since the award is of joint and several liability it is open to the claimants to proceed against the owner straightaway without proceeding against the insurance company. If the award is executed against the owner by attaching the vehicle or otherwise the owner would be entitled to get the said amount reimbursed by the insurance company. u/s 110-E of the Act the claimants may obtain a certificate from the Tribunal to the award amount and the Collector may proceed to recover the same in the same manner as arrears of land revenue. Such a certificate the claimants may obtain against the owner also. Having regard to these provisions whenever there is an award against the owner fixing the liability the owner is an aggrieved person. On the basis of the principle that the award amount is covered by the insurance policy, and the insurance company would be ultimately liable to pay the same the owner does not cease to be an aggrieved person. If a law is laid down stating that the owner would not be a person aggrieved if the award amount is recoverable from the insurance policy, even though there is a joint and several liability, it would result in a hazardous consequence both as to the claimants as well as to the owner of the vehicle. Suppose, if the owner were not to prefer an appeal under the impression that the award amount is covered by the insurance policy and if the insurance company alone were to prefer an appeal and if it could succeed on the basis of the grounds mentioned u/s 96(2) of the Act, the award becomes final as against the owner. In such an event the owner would be put to great difficulty, because if he were to prefer an appeal thereafter such an appeal would be barred by time. There can be a case in which the claimants may prefer an appeal and the compensation amount may stand enhanced so as to exceed the limit provided by the insurance policy and if the owner were not to prefer an appeal challenging the quantum of compensation, on the ground that the award has proceeded on unsustainable principles with the impression that the award amount was covered by policy such owner would be saddled with additional liability. There may be an instance that the compensation has been awarded by applying a wrong multiplier in terms of the judgment of this Court in *Bhagwandas Vs. Mohd. Arif*, , which is approved by the Division Bench of this Court in *Nirmala Narsava v. Vilas Ramachandra Shangda* 1989 ACJ 715, or there may be a case, a compensation is awarded on a particular head but such a claim on that particular head is not sustainable. For instance in a Division Bench judgment of this Court in *Andhra Pradesh State Road Transport Corporation Vs. Gali Aruna and Others*, , it is held that no compensation can be awarded towards the funeral expenses. It is also a principle of law enunciated by this Court that a compensation towards pain and suffering in fatal accident cases cannot be awarded in *Andhra Pradesh State Road Trans. Corpn. v. Ch. Narasava* 1987 ACJ 419. The same also is the law declared by the Supreme Court in *N.*

Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75. In such circumstances, the owner would be affected by the judgment and award, if the Tribunal awarded compensation contrary to these or other similar principles and such owner is an aggrieved person even if the award amount is recoverable from the insurer in its entirety. The issue may be considered from another angle also. Suppose such an illegal award were not to be challenged by the owner on the basis of its non-maintainability, only because the award amount is fully covered by the policy and the insurer also not challenging the same because the grounds provided u/s 96(2) of the Act are not available, the illegal award would be allowed to stand. It is also an established principle of law that no person should have an unjust enrichment. If an illegal award is allowed to stand as to its quantum, the claimant would have an undue advantage of certain amount which he is not entitled to. But such a situation is sought to be justified on the basis that the Motor Vehicles Act is a beneficial legislation. But in my opinion the beneficial legislation does not mean that such legislation enables any person to have an illegal enrichment. Therefore, such an award requires to be challenged in appeal by the aggrieved person. If such an illegal award is not challenged by the owner, and if the Court feels that the award under challenge, at the instance of the claimant, was erroneous it may feel helpless because the owner has not preferred an appeal. When this situation was confronted to the counsel appearing for the appellant he submitted that the Court in such cases may suo motu modify such an award if it considers just. But if the Court can correct such an illegality suo motu why the owner should be prevented from challenging such illegality as an aggrieved person only on the basis that the award amount is covered by insurance policy. Therefore, the interpretation that the owner is not aggrieved if the award amount is covered by the insurance policy would lead to such anomalous situations. Hence, in my humble opinion another learned single Judge of this Court in Boyapati Koteswara Rao v. Pappu Veeranna 1988 ACJ 1126, rightly held that in such a case a joint appeal is maintainable and the owner also can be said to be an aggrieved person for the purpose of Section 110-D of the Act. The learned single Judge disagreeing with the opinion expressed by the High Court of Allahabad in a decision in United India Fire. & Genl. Ins. Co. Ltd. v. Gulab Chandra Gupta 1985 ACJ 245, held as follows:

(3) I am of the view that the preliminary objection is not correct and that this appeal jointly preferred by the insurance company as well as by the owner of the vehicle is maintainable. The insurance company is only in the position of an indemnifier to the owner of the vehicle. Unless the owner of the vehicle is made liable, the insurer, being an indemnifier, cannot be made liable. I fail to see how the person primarily liable as well as the person who indemnifies him cannot be said to be "aggrieved person" at the same time and, if so, why they cannot join together in single appeal. It may be that the defences open to the indemnifier are statutorily restricted from those available to the person principally liable but that does not mean that there are any conflicting or opposing interests between them. Under the Motor Vehicles Act, provision is made to recover the amount

from the insurance company up to a particular limit and beyond that, the amount can be recovered from the owner of the vehicle. If the injured person is not able to recover any part of the amount from the insurance company (for some good reason), he can certainly recover it from the owner of the vehicle. The alternative argument that the owner of the vehicle is not an "aggrieved person" at all because his liability is taken over by the insurance company is not correct. It will be anomalous to say that the person mainly liable is not an "aggrieved person" merely because the amount is not initially recoverable from him. Even in a case where the quantum of liability of the insurance company exceeds the total amount claimed by the injured person the position, in my opinion, is not different. The inter se relationship of "indemnifier" and "indemnified" continues and there is no conflicting interest. Further, it may also be the duty of the owner of the vehicle to protect the interests of the "indemnifier" and see that the latter is not unnecessarily mulcted with liability. Merely because the claim in the case is less than the limits applicable to the indemnifier, the owner of the vehicle need not feel absolved of his liability to safeguard the interests of the indemnifier. The mere fact that certain defences open to the owner of the vehicle are not open to the insurance company does not make any difference.

(4) Suppose in the very case, the parties have preferred independent appeals, nothing precludes the Court from taking up the appeal preferred by the owner of the vehicle at the outset (if the Court comes to the conclusion that (say) negligence is not made out or that the quantum is liable to be reduced) give relief in those respects to the owner of the vehicle. The Court can then take up the appeal preferred by the insurance company and implement the result in the owner's appeal while dealing with the other appeal preferred by the insurance company. The Court cannot refuse to give this benefit to the insurance company in the connected appeal merely because the defences open to the insurance company are not the same as those available to the owner of the vehicle inasmuch as when two appeals arise out of the same petition filed by the injured person, there cannot be inconsistent decrees in the same matter. In such circumstances, I do not find anything wrong in both the persons filing the same appeal. This is, however, subject to the condition that in case the appeal preferred by the owner of the vehicle is dismissed for default or on merits or for some reason, the insurance company cannot fall back upon the grounds mentioned by the owner of the vehicle in his appeal. But, the insurance company shall be confined only to the grounds available to it under the Motor Vehicles Act. I, therefore, dissent from the decision in *United India Fire & Genl. Ins. Co. Ltd. v. Gulab Chandra Gupta* 1985 ACJ 245.

However, the learned Counsel for the appellant relied upon a Division Bench judgment of Gauhati High Court in the case of *Hemendra Dutta Choudhury v. Arun Kumar Bordoloi* 1988 ACJ 813. It is no doubt true that the Hon'ble High Court of Gauhati in that case held that wherever the award amount is covered by the insurance policy the owner of the vehicle would not be an aggrieved person for the purpose of Section 110-D of the Act. But, it has to be noted that the Full

Bench of the very Gauhati High Court reversed the said judgment of the above Division Bench in United India Insurance Co. Ltd., Gauhati Vs. Member, Motor Accident Claims Tribunal, Lakhimpur and Others, . In order to have the benefit of the observations of the Full Bench of Gauhati High Court I am extracting the relevant portion as under:

(13) In an action for damages arising from injuries caused by a motor vehicle accident on account of negligence of the driver, the primary liability under the common law is on the driver, the owner of the vehicle is constructively liable. When there is a contract of insurance between the owner and the insurer, the insurer is the indemnifier. When the Tribunal passes an award holding that the owner is liable to pay the compensation, the owner suffers an adverse judicial decision. The fact that he will be indemnified by the insurer does not obliterate the adverse decision rendered by the Tribunal against him. The possibility of the insurer, on account of insolvency or otherwise, being unable to indemnify also requires to be taken into consideration. The possibility of the owner being deprived of no claim bonus in certain types of insurance contract is also relevant. The mere fact that the insurance policy in a given case covers the amount ordered to be paid as compensation will not take away the grievance of the owner who suffers an adverse decision. We, therefore, do not agree with the view taken in Hemendra Dutta Choudhury's case 1988 ACJ 813, that the owner is not a person aggrieved. It is open to him to file an appeal and raise all defences open to him. The insurer who is actually made liable to pay also has a right of appeal, but the right is circumscribed by the provisions of the Act, such as, Section 149. With respect, we are also unable to agree with the line of reasoning in Hemendra Dutta Choudhury's case (supra), that public interest requires that the insurer should be given the right of hearing on all grounds in the appellate forum. The insurer certainly should have the right to approach the appellate forum and raise defences appropriate to its status. If denial to the insurer of the right to raise all defences before the Tribunal is not a denial of right of hearing and a denial of fair play in action, we fail to see how it would be so when the restriction operates in the appellate forum also.

I am in respectable agreement with the Full Bench decision of the High Court of Gauhati. In this view of the matter, I politely record my disagreement with the judgment of the High Court of Jammu and Kashmir in Nahar Singh and Another Vs. Manohar Kumar and Others, and of the High Court of Rajasthan in Sushila v. Succha Singh 1989 ACJ 226 and in Narendra Kumar and Another Vs. Vares Hassan Farooqui and Others, . However, I wish to add that even though the owner is aggrieved person regarding the quantum of compensation such a quantum of compensation may not be interfered with in appeal filed by him, unless the Tribunal applies wrong principles of law or misdirects itself or the amount awarded is too low or too high, as held by the High Court of Patna in Bihar Co-operative Motor Vehicles Insurance Society Ltd. v. Rameshwar Raut 1969 ACJ 405 and in Howrah Insurance Co. Ltd. v. Yukti Nath Jha 1974 ACJ 18. In this view of the matter, I hold that the owner is an aggrieved person and the

appeal filed by him is maintainable, even if the insurance company is made liable regarding the quantum awarded by the Tribunal. Therefore, the learned single Judge in this case rightly held that the joint appeal filed by the insurance company and the owner was maintainable and thus the impugned order does not call for any interference.

18. Before parting with the case, I must note that for all these years this Court has been consistently taking the view that an appeal filed by the owner regarding the quantum of compensation, whether the insurance company is made liable for the entire extent or not, is maintainable and to unsettle this settled law at this juncture, according to me, would not be just and proper. In fact, considering the similar situation the Supreme Court observed in *Shyamaraju Hegde Vs. U. Venkatesha Bhat and Ors*, , that:

It is one of the essential requirements of the administration of justice that the judgment rendered by superior Courts and particularly with the approval of the Apex Court should not be frequently changed so as to unsettle settled positions.

In this view of the matter, I do not find any merits in the Letters Patent Appeal and accordingly the same is dismissed but with costs.