

(2003) 01 MAD CK 0019

In the Madras High Court

Case No : C.M.A. (NPD) No. 2767 of 2002

Mrs. Sasikala Ramalingam and The Divisional Manager,
Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sami Iyhia Nattar, Rasammal, Kokilan, Kumar, Ramar
Kalanjiyam, Arulselvam, Sreenivasa Transports and The
Divisional Manager, National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2004) ACJ 323 : (2003) 1 CTC 389 : (2003) 1 LW 715 : (2003) 1 MLJ 482

Hon'ble Judges : S. Jagadeesan, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Arun Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The following important issue, which frequently arises for consideration before this Court, is as follows:-

Whether the insurer can question the quantum of compensation awarded by the Claims Tribunal by filing a joint appeal along with the insured?

2. The following are the few facts that are relevant for the disposal of this civil miscellaneous appeal.

The deceased Selvam, a student of B.V.N. College of Physical Education, Robertsonpet, Kollar Gold Fields, Karnataka, died when the

Ambassador car bearing Regn. No. TN-25-8980 owned by the first appellant, in which the deceased along with his friends traveled, met with an

accident near Ramaraja Wines, Kirumambakkam Main Road, Cuddalore, at about 22.00 hours on 9.12.94, and dashed against a lorry bearing

Regn. No. PY-01-C-7840 belonging to the seventh respondent which came from the opposite direction in a rash and negligent manner. The car

was insured with the second appellant and the lorry was insured with the eighth respondent. As against the claim of Rs. 3,00,000/- made by the

parents, brothers and sisters of the deceased viz., the respondents 1 to 6, the Additional Motor Accidents Claims Tribunal, Special Officer (Civil

Judge), Pondicherry, awarded a sum of Rs. 2,70,000/- in favour of the respondents 1, 2, 5 and 6 together with interest at 12% per annum from

the date of petition till the date of deposit. The claim of the respondents 3 and 4 was dismissed as by then, they became major.

3. The present appeal has been filed by the insurer along with owner of the car, questioning the quantum of compensation awarded by the Tribunal.

Since we are disposing the appeal on the ground of maintainability, we do not propose to traverse the various factual details of the accident, the

claim and the finding of the Tribunal in regard to the negligence and other aspects.

4. In order to decide the question as to the right of the insurance company to prefer an appeal in challenging the quantum either independently or

jointly with the insured, certain important provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the Act") may be referred to. In

order to make the insurer to satisfy the judgments and awards against the person insured, there must be a policy of insurance taken by the insured

with the insurer. The terms and conditions of policies and the limits of liability are governed by the provisions of Section 147 of "the Act". In the

absence of any insurance policy, the liability of the insured does not pass on to the insurer.

5. Section 149(2) of the Act prescribes that an insurance company can defend the petition only on the ground of breach of conditions of policy

referred to in sub-section (2) or on the ground that the policy is void for the reasons referred to in the said section. The relevant provisions of

Section 149 of the Act reads as under:-

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1) If, after a certificate of insurance

has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of

any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) (or under the provisions of Section 163-A) 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 judgment.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle, or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been

disqualified for holding or obtaining a driving licence during the period of disqualification, or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false

is some material particular.

(3) to (6).....

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any

person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section

(3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

In terms of Section 149(2) of the Act, the insurer has the benefit of challenging the award only on any or all of the grounds available to it under the

said section. Challenge to the quantum of compensation is not one of the conditions enumerated u/s 149(2) of the Act. In the absence of such

entitlement, the insurance company cannot maintain an appeal u/s 173 of the Act questioning the quantum. Law is well settled on this issue. Useful

reference could be made to the latest pronouncement of the Apex Court in ""NATIONAL INSURANCE CO.LTD., CHANDIGARH v.

NICOLLETTA ROHTAGI AND OTHERS. While considering the right of the insurance company to prefer an appeal questioning the quantum,

the Apex Court has held as follows:-

13. To answer the question, it is necessary to find out what grounds the insurer is entitled to defend/contest against a claim by an injured or

dependants of the victims of motor vehicle accident. u/s 96(2) of 1939 Act which corresponds to Section 149(2) of 1988 Act, an insurance

company has no right to be a party to an action by the injured person or dependants of deceased against the insured. However, the said provision

gives the insurer the right to be made a party to the case and to defend it. It is, therefore, obvious that the said right is a creature of the statute and

its content depends on the provisions of the statute. After the insurer has been made a party to a case or claim, the question arises what are the

defences available to it under the statute. The language employed in enacting sub-section (2) of Section 149 appears to be plain and simple and

there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on

grounds enumerated in the sub-section, namely, sub-section (2) of Section 149 of 1988 Act, and no other ground is available to him. The insurer is

not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other

conditions of the policy which do not find place in sub-section (2) of Section 149 of 1988 Act. If an insurer is permitted to contest the claim on

other grounds it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for.

14. Sub-section (7) of Section 149 of 1988 Act clearly indicates in what manner sub-section (2) of Section 149 has to be interpreted. Sub-section

(7) of Section 149 provides that no insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to

avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is

referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country,

as the case may be. The expression "manner" employed in sub-section (7) of Section 149 is very relevant which means an insurer can avoid its

liability only in accordance with what has been provided for in sub-section (2) of Section 149. It, therefore, shows that the insurer can avoid its

liability only on the statutory defences expressly provided in sub-section (2) of Section 149 of 1988 Act. We, are, therefore, of the view that an

insurer cannot avoid its liability on any other grounds except those mentioned in sub-section (2) of Section 149 of 1988 Act.

15. It is relevant to note that the Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on

conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of

Section 149 cannot be taken as a defence by the insurer. If the Parliament had intended to include the breach of other conditions of the policy as a

defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to

take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to insurer in the

statute which is neither found in the Act nor was intended to be included.

16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to

what are provided in sub-section (2) of Section 149 of 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in

the appeal would confine to only those grounds.

6. However, the right of the insured to defend a claim is not restricted so long as the insured is armed with an insurance policy which is valid and is

in force on the date of the accident and there is no breach of conditions of policy. Before the Tribunal, the insured is entitled to question the

quantum also. When the Tribunal finds that the driver of the insured drove the vehicle in a rash and negligent manner which resulted in the accident

making the insured liable to compensate the claimants and consequently holding the insurer to honour the award by paying the compensation in

view of the currency of policy, it is imperative that the insured is a person aggrieved as to the finding on the quantum of compensation. In those

circumstances, an appeal at the instance of the insured questioning the quantum of compensation is maintainable.

7. On the above background, it is to be now considered as to whether the insurance company could file an appeal questioning the quantum by

joining the insured as one of the appellants. It is well settled law that when the insurance Company is not entitled to seek a relief directly, it cannot

be allowed to seek the said relief indirectly. While the intention of the legislature is very much clear as to the limitations for the insurance company

to challenge an action at the instance of the claimant seeking for compensation, the Court cannot allow the insurance company to defend such

action on any other grounds except those are available u/s 149(2) of the Act. Allowing the insurance company to defend the claim of compensation

on any other grounds except those provided u/s 149(2) of the Act would be adding something more into the Section, which in our considered

view, would be outside the ambit of the provision of Section 149(2) of the Act and the Court are not competent to do.

8. The question of entertaining a joint appeal both by the insured and the insurer questioning the quantum of compensation came up for

consideration before the Apex Court in "" Narendra Kumar and Another Vs. Yarenissa and Others, : In that case, the Apex Court has held that an

appeal filed by the insurance company questioning the quantum of compensation is not maintainable. However, the Apex Court went on to add that merely because the appeal at the instance of the insurance company questioning the quantum was not maintainable, the appeal filed by the insured need not be dismissed only on the ground that both the insured and the insurer filed a joint appeal. The Apex Court, therefore, directed that while dismissing the appeal filed by the insurer as not competent, the insured may be permitted to proceed with the appeal after amending the cause title.

9. A similar question came up for consideration before the Apex Court in the subsequent judgment in "" Chinnama George and Others Vs. N.K.

Raju and Another, : wherein the Court also made a reference to the judgment in Narendra Kumar's case. The Apex Court in fact, adverting to

Section 149(2) of the Act, has authoritatively held that the insurer cannot maintain a joint appeal along with the owner or driver, if defence on any

grounds u/s 149(2) is not available to it. It is therefore, manifestly clear that when the defence enumerated u/s 149(2) of the Act are not available to

the insurance company, not only a separate appeal by the insurance company, but also a joint appeal with the insured is not maintainable. The

Apex Court has in paragraph 10 held as follows:-

There is no dispute with the proposition so laid by this Court. But the insurer cannot maintain a joint appeal along with the owner or the driver if

defence on any ground u/s 149(2) is not available to it. In that situation a joint appeal will be incompetent. It is not enough if the insurer is struck

out from the array of appellants. The appellate court must also be satisfied that a defence which is permitted to be taken by the insurer under the

Act was taken in the pleadings and was pressed before the Tribunal. On the appellate court being so satisfied the appeal may be entertained for

examination of the correctness or otherwise of the judgment of the Tribunal on the question arising from/relating to such defence taken by the

insurer. If the appellate Court is not satisfied that any such question was raised by the insurer in the pleadings and/or was pressed before the

Tribunal, the appeal filed by the insurer has to be dismissed as not maintainable. The court should take care to ascertain this position on proper

consideration so that the statutory bar against the insurer in a proceeding of

claim of compensation is not rendered irrelevant by the subterfuge of the insurance company joining the insured as a co-appellant in the appeal filed by it. This position is clear on a harmonious reading of the statutory provisions in Sections 147, 149 and 173 of the Act. Any other interpretation will defeat the provision of sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer.

10. The duty of the Court while interpreting the provision of law is to give effect to the real meaning to the statute coupled with legislative intent.

When the words of the statutes being clear, explicit and unambiguous, there is no scope to have recourse to extend external aid for their

construction. The court must indeed proceed on the assumption that the legislature was fully aware of the limitations in allowing the Insurance

Company to challenge the claim only on the conditions enumerated u/s 149(2) of the Act. The Court cannot add words to a statute or read words

in to it which are not there, especially when the literal reading produces an intelligible result. A combined reading of Sections 147, 149(2) and 173

of the Act would indicate that the third party should not suffer on account of failure of the insured. The Motor Vehicles Accident claim is a tortuous

claim directed against the tortfeasors, who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory

liability created under "the Act". In the circumstances only, the entitlement of the insurance Company to challenge the award is restricted u/s 149(2)

of the Act. Question of challenging the quantum by the Insurance Company does not arise as it is not one of the ground enumerated u/s 149(2) of

the Act. Consequently, filing an appeal by the Insurance Company challenging the quantum would be outside the purview of Section 149(2) of "the

Act". Hence, the appeal filed by the Insurance Company, questioning the quantum is not maintainable.

11. So far as the first appellant, the insured is concerned, though an independent appeal challenging the quantum of compensation is maintainable,

we are of the view that the appeal at the instance of the first appellant is also to be dismissed both on law and on facts of this case. On law, when

the Insurance company is not entitled to maintain an appeal questioning the quantum, allowing the insurance company to file a joint appeal along

with the insured would be a mockery of the provision u/s 149(2) of the Act as has been held by the Apex Court in the judgment reported in

Chinnama George and Others Vs. N.K. Raju and Another, : Further, the Apex Court has made a note of caution to find out as to the defence put

forth before the Tribunal. Taking into consideration of such caution, the facts or defence taken by both the insurer and the insured in the present

case should be considered. Even on facts, it is to be noted that the claim of compensation was made on the basis that the monthly income of the

deceased was Rs. 2,000/-. The evidence of P.W.1 supported the said claim. On considering the evidence, the Tribunal arrived the said sum as

monthly income of the deceased. The first appellant while defending the claim filed a detailed counter. The material portion of the same is extracted

hereunder:-

R2 is the insurer of R1's vehicle and if at all R1 is made liable to pay the compensation, it is R2, who should pay it. R3 and R4 are liable to pay

the compensation jointly and severally. They are solely liable to pay the compensation in view of the accident having caused by the said driver of

the lorry which belonged to R3. The driver of the car Zakir Hussain belonging to R1 succumbed to his injury in the accident. The said Zakir

Hussain's legal heir filed claim petition before the Thiruvannamalai Tribunal and got compensation as against R3 and R4 for the death of said Zakir

Hussain in the accident. The petitioners have to prove each and every averments in the petition. Accordingly, R1 prayed for the dismissal of the

petition.

12. A perusal of the said counter does not indicate any challenge to the claim as to the monthly income of the deceased which was the basis for the

Tribunal to fix the quantum of compensation. In the absence of any challenge to the same, it is not now open to the first appellant, the insured to

question the quantum by way of appeal. Therefore, the challenge to the order of the Tribunal by the first appellant is also liable to be rejected.

13. Instances of entertaining the joint appeals at the instance of parties having common cause coupled with their entitlement to challenge the

prejudicial orders are not alien to the Courts. For sustaining such joint appeals, the appellants must show a common cause as well their entitlement

to challenge the orders under appeal. In the absence of the above, the Court

shall refrain from entertaining appeals at the instance of such appellants. In the event of different cause is espoused by the joint appellants, it would be open to each of the appellants to file separate appeals on the ground of their entitlement to challenge the prejudicial orders. In so far as the insurance company, the appeal questioning the quantum is not maintainable. On the other hand, such an appeal at the instance of the insured is maintainable. There is no common entitlement to the insurer and the insured in joining to prefer a joint appeal. As regards to the common cause, though the quantum could be challenged by the insured, such a defence was not taken questioning the monthly income of the deceased by the insured at the time of trial. There is no common cause even as to the defence in questioning the quantum. In such event, it must necessarily be held that such joint appeal at the instance of parties who do not have either a common cause or a joint entitlement to question the award are not maintainable. Allowing such joint appeals would frustrate the limitation prescribed under the provisions of the Act, more particularly, u/s 149(2) of the Act in the present case. Maintaining such appeals would be allowing the insurance company to achieve something more to which it is not entitled under the provisions of the Act.

14. For all the above reasons, the civil miscellaneous appeal fails as not maintainable and the same is dismissed. Consequently, C.M.P. No. 18728 of 2002 is also dismissed.