
(1992) 07 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : C.I.M. Appeal No. 119 of 1988

Nahar Singh and Another	Vs	APPELLANT
Manohar Kumar and Others		RESPONDENT

Date of Decision : 10-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1939 — Section 110D, 96(2)

Citation : (1993) ACJ 269 : AIR 1993 J&K 69

Hon'ble Judges : B.A. Khan, J

Bench : Single Bench

Advocate : R.P. Bakshi, for the Appellant; T.S. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

B.A. Khan, J.—Who is a "person aggrieved" within the meaning of Section 110-D of the Motor Vehicles Act (for short the Act). Is he any

Tom, Dick and Harry or whose interests stand prejudicially effected by the award? What should be his qualifications to get him this status. An

answer to these questions will decide the fate of this appeal. Section 110-D of the Act reads thus:--

Appeal:---(1) Subject to the provisions of Sub-section (2), any person aggrieved by an award of Claims Tribunal may within 90 days from the date of award prefer an appeal to the High Court.

As it is, the expression "person aggrieved" defies an exact definition. Its meaning varies with the context of statutes wherein it occurs and depends

upon diverse and varied factors. This is not to suggest that it admits of no fair interpretation, but to underscore the elusive-ness of the concept

which has constrained the courts to define it variedly. Sometimes liberally and at

other times rigidly depending upon the circumstances of the case.

Taking the word as it is understood in common parlance a "person aggrieved" should include a person whose interests are prejudicially affected by

a decision -- a person who has a genuine grievance that the decision has adversely hit him, denied him something which was otherwise legally due

to him and has imposed some burden on him to be discharged.

2. These broad tests have been deduced by the courts from time to time depending upon the nature of the statute in the context of which the

expression is required to be interpreted. In *Buxton v. Minister of Housing & Local Govt.* (1961) 1 QB 278, the words were given a restricted

meaning and it was held that the expression "person aggrieved" meant a person who has suffered a legal grievance and against whom a decision

has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to

something. In *King v. Middlesex Justice* it was further clarified that the person should be immediately aggrieved and not consequently aggrieved. A

nominal or speculative adverse effect on the right or interest of a person is insufficient.

3. The legal position on the point has proceeded, by a large, on similar lines in our country also. In this regard it should suffice to briefly extract the

ratio of the judgment rendered by the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, (at page

581):

The expression denotes an elastic and to an extent an elusive concept, it can't be confined within the bounds of a rigid, exact and a comprehensive

definition. At best its features can be described in a broad tentative manner. Its scope and meaning depends upon diverse and variable factors such

as content and intent of the statute, the nature and extent of the prejudice and injury suffered by him.

Following this decision, Full Bench of this Court in *United Fire and General Insurance Co. Ltd. Vs. Lakshmi Shori Ganjoo and Others*, ,

interpreted the expression as used in Motor Vehicles Act and observed as under (at page 115):--

Expression "aggrieved party" contains the inherent limitations in the matter of filing of an appeal. The expression in the context of Section 110-D

has to be interpreted and understood in common parlance. It is not possible to give an exhaustive definition of the expression which has to be interpreted in the context in which it appears in a particular statute. As a general principle, it has to be held by the court that a person who feels disappointed with the result of a case is not necessarily a "person aggrieved" to be so classified, he must be disappointed of a benefit which he would have received if the order had gone other way. The order must cause him the legal grievance by wrongfully depriving him of something. If he was not entitled to relief in first place, he cannot be aggrieved if the relief was denied to him. But if he was entitled and the same has been denied to him, he would be a "person aggrieved". Thus, a party would be regarded as an "aggrieved party" for the purpose of Section 110-D where the claim or defence available to the party do not find favour with the Tribunal in making an award.

A Division Bench of the Allahabad High Court in United India Fire and General Insurance Co. Ltd., Kanpur and Another Vs. Gulab Chandra

Gupta, grappled with the point in more precise terms and held as under (at page 50) :--

A finding that the owner/driver was responsible for causing accident or a finding that the accident was as a result of rash and negligent act of the driver would not make them "persons aggrieved" unless there was a direction in the award that they were liable to pay some part of the entire amount of compensation awarded. The owner of a vehicle can be an "aggrieved person" if he has been ordered to pay some part of the compensation awarded by the Claim Tribunal. It would then be a legal grievance and the order would be such as may, if not challenged, injure him.

The Calcutta High Court followed suit and reiterated the view in Kantilal and Bros. and Another Vs. Ramarani Debi and Others, as under (at page 156):

There had been no legal grievance, denial or deprivation of a legal right or financial interest, nor any order affecting or prejudicing the interest of the owner. There had been no legal or practical injuries to the owners as no liability of paying compensation was placed upon them. Therefore, there was no occasion or right to prefer an appeal by them.

A similar view was taken by the Madhya Pradesh High Court in New India

Assurance Co. Ltd. and Others Vs. Smt. Shakuntalabai and Others,

and considering decisions of various High Courts and the Supreme Court, it laid down the following test:--

The test really is the question of relief which the person can obtain in appeal. Owner cannot act as a proxy for the insurer. There is no award

against him, i.e. if he is not liable to pay, he cannot be a ""person aggrieved"" because he cannot have any grievance against the award. Merely

because there is a finding against him by the Tribunal does not make him the ""person aggrieved"".

4. On the other side of the spectrum are some judgments relied upon by Mr. Bakshi and two of these i.e. Parmanand and Others Vs. Manohardas,

and K.R. Visalakshi and Others Vs. Pookodan Hamza and Others, deserve mention for taking a contrary view. In Parmanand and Others Vs.

Manohardas, , A Division Bench of the Madhya Pradesh High Court held thus:

For a just and fair decision between the parties on the question of liability, it must be held that the driver and the insured owner have a right of

appeal u/s 110-D to challenge the award, if they dispute the finding of fault and consequent primary liability against them.

In K.R. Visalakshi and Others Vs. Pookodan Hamza and Others, , Kerala High Court opined thus :

The material deprivation is not essential. Assuming such an incident to be essential, even then the owner becomes the ""person aggrieved"" as the

award till deprives him of no claim bonus, which he would otherwise be entitled to get under the contract of insurance.

A review of the judgments portrays a hazy scenario with courts taking divergent view while interpreting the expression. Nonetheless, some broad

tests are deducible which can be summarised as under:--

a) A ""person aggrieved"", when interpreted in the context of Motor Vehicles Act means the person who has a genuine grievance and not a

camouflaged or proxy one, against the award. He must feel aggrieved immediately and directly and not consequently or nominally.

b) The award must prejudice his interests adversely and deprive him of something which he was otherwise entitled to get. Its effect on his right or

interest must be substantial in contract to being speculative or nominal.

c) A mere finding that a person was negligent and responsible for accident is not

enough. The award must make him liable to pay some part or the other of compensation. He must suffer some material deprivation.

Having crystallised the legal position, it becomes fairly easy to appreciate the nuances of the present controversy. Mr. Thakur, LC for respondent

has objected to the maintainability of this appeal on the ground that appellants are not the persons aggrieved. He submits that a joint appeal by

them could lie if either of them was otherwise competent to maintain it. According to him, appellant No. 1 (owner) is not competent because he is

not the person aggrieved as the award does not operate against him. Similarly, appellant-Insurance Company is incompetent as it challenges the

award on grounds of defence not available to it u/s 96(2) of the Act.

5. This appeal, which primarily, disputes the question of compensation, arises out of a claim petition filed by respondent No. 1, a lawyer by

profession. He was riding a scooter on 20-3-1986 when it was hit by a truck resulting in multiple injuries to him. He filed a claim petition and

MACT, Jammu awarded him a compensation of Rs. 1.16 lacs with 12% interest p.a.

6. In the light of the contention raised, it requires to be seen whether this appeal can be held to be maintainable on the part of appellants jointly or

severally. Appellant No. 1 is the owner of the vehicle involved in the accident and it is to be conceded that but for him the other appellant would

not have incurred the liability. It is primarily the judgment passed against the owner, that has made the Insurance Company liable. Even so can it be

said that owner is the person aggrieved within the meaning of Section 110-D and competent to maintain the appeal. Going by the preponderance

of judicial opinion on the point, the answer is in the negative. This is so because the expression has to be given a restricted meaning in the context

of the content and intent of the Motor Vehicles Act. The owner, obviously, does not qualify the test for his grievance against the award can be only

consequential and not immediate. His interests cannot be said to adversely and prejudicially affected, nor is he deprived of anything which was

otherwise due to him. The award does not direct him to pay any compensation. It does not affect any of his interests directly and immediately.

Viewed thus, it is difficult to declare appellant No. 1 as "person aggrieved" and, as such, he is not competent to maintain this appeal.

7. This takes me to examine the competence of appellant-Insurance Company. It is well settled that an Insurance Company can take only those

grounds in appeal which are available to it u/s 96(2) of the Act. Where the appeal proceeds on grounds other than those contemplated in the

aforesaid section, it will be misconceived and not maintainable.

8. I have gone through the grounds set out in the memo of appeal and I find that all these grounds dispute the quantum of compensation and the

basis thereof. Since the Insurer can't challenge the quantum of compensation, that being extraneous to the grounds envisaged in Section 96(2) he

has no other grounds to sustain this appeal.

9. Mr. Bakshi has relied upon K.R. Visalakshi and Others Vs. Pookodan Hamza and Others, to canvass that an insurer can file an appeal on

grounds other than those contained in Section 96(2). But I am unable to follow these as I am bound by the Full Bench judgment of this court on the

point.

10. Therefore, it will be no use burdening this judgment by discussing the ratio of the decisions referred. A Full Bench of this court, dealing with the

point in AIR 1992 J&K 105 laid down as under (at page 115):--

It could not be contended that the limitations which are set out in Section 96(2) of the Act in the matter of defending claim petition before the

Tribunal do not extend to appeals filed u/s 110-D of the Act by the Insurer or that Section 96(2) is not exhaustive. The limitations which are set out

in Section 96(2) of the Act are implicit and inherent in Section 110-D of the Act and have to be read in that section. Therefore, an insurer cannot

resist the claim before the Tribunal or challenge the award of the Tribunal in appeal on grounds other than those enumerated in Section 96(2) of the

Act, except where the insurer has reserved a right in the policy of Insurer has reserved a right in the name of insurer himself or where the Tribunal

or the court is satisfied that the Insurer/Claimant have colluded with each other and in exercise of powers u/s 110-C (2-A) has granted permission

to the insurer to defend the claim on all the grounds on which the insurer could defend the claim"".

It is not anybody's case that any right of contest stood reserved in the Insurance Policy in the present case, nor is there any complain of any

collusion between the claimant and the insured. Therefore, it has to be held that

this appeal proceeds on grounds other than those contemplated in

Section 96(2) and this is not maintainable on behalf of appellant-Insurance Company also.

11. Could a joint appeal by the two be still held maintainable. It could be if appeal of one of appellants had been held competent. Since the appeal

by each one of them has been held incompetent, their joint appeal should suffer the same fate.

12. How about the cross-objections filed by the respondent? Do these survive even after the appeal has been held not maintainable. These do

because the appeal has not become no-existent. As a matter of fact, cross-objections were filed after it was admitted to hearing. Therefore, if the

appeal is held incompetent on final hearing, respondent's right to seek adjudication of cross-objections remains intact. That also provides me an

occasion to scrutinise the assessment of compensation made by the Tribunal and to examine whether it has been fairly awarded.

13. A close look at the award reveals that Tribunal has been both liberal and casual in awarding compensation in some respects. It has awarded

Rs. 15,000/- to the claimant for some future surgery, which he may or may not undergo. Similarly, it has made a duplicate, award for mental shock,

pain and suffering, It has awarded Rs. 20,000/- on this head during claimant's hospitalisation and Rs. 20,000/- for future. An amount of Rs.

20,000/- has been given for loss of amenities of life on the ground that claimant had lost chances of marriage when in fact he is married and

enjoying his conjugal life. It seems to me that Tribunal has gone out of its way in some areas and has not adhered to laid down norms in the matter.

It has been unduly presumptuous and speculative. Therefore, compensation awarded on the heads referred to hereinabove deserves to be

deducted or reduced. I accordingly deduct Rs. 15,000/- awarded for future surgery and Rs. 20,000/- awarded in duplicate for mental shock, pain

and suffering. I also reduce the award for loss of amenities of life by Rs. 10,000/-. In this manner, an amount of Rs. 45,000/- shall stand deducted

from the total amount of compensation awarded. The balance amount shall be payable with 12% interest p.a. from the date of award to the date of

realisation within three months from today, if not already paid. The award passed by the Tribunal shall stand modified to the extent indicated.

14. In the result, the appeal is dismissed and the cross-objections disposed of accordingly.