
(2004) 07 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 84 of 2000

National Insurance Co. Ltd.	Vs	APPELLANT
Anguri Devi and Others		RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 170, 173

Citation : (2004) 3 ACC 845 : (2005) ACJ 167 : (2004) 2 ShimLC 8390

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Advocate : Ashwani K. Sharma, for the Appellant; Ravinder Thakur, J.L. Bhardwaj and Y. Paul, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—This appeal has been filed by National Insurance Co. Ltd. u/s 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 13.7.1999 passed by the learned Motor Accidents Claims Tribunal, Solan, in M.A.C. Petition No. 66-S/2 of 1996. As this appeal was taken up for consideration and hearing Mr. Ashwani Kumar Sharma, learned counsel appearing for the insurer appellant, when confronted with the difficulty coming in the way of the appellant about the maintainability of this appeal, looking to the limited nature of defences available to the appellant insurer, u/s 149 (2) of the Motor Vehicles Act, 1988, read with Section 173 submitted that the appellant had filed an application u/s 170 of the Motor Vehicles Act before the Tribunal with a prayer that the appellant be permitted to contest the claim petition on all the grounds since, as per the averments contained in this application, the appellant was not informed by the owner-insured of the vehicle in question about the occurrence of the accident, if at all it took place and that the appellant apprehended that there might be a collusion between the claimants and the owners of the vehicle in question. According to Mr. Sharma even though this application had been filed by the appellant before the Tribunal during the pendency of the proceedings of the

case, the Tribunal did not pass any order on this application, one way or the other. I have seen various orders passed by the Tribunal in this case and indeed agree with Mr. Sharma's contention that this application never came up for consideration before the Tribunal and the Tribunal did not pass any order on this application, rejecting or allowing the same.

2. I have also seen that the body of the judgment/award passed by the Tribunal on the very face of it is suggestive of the fact that the owner-insured did not contest the claim petition because presence of any one on behalf of owner-insured has not been recorded in the body of the judgment of the Tribunal. Mr. Ravinder Thakur, learned counsel appearing for the respondents-claimants, Mr. J.L. Bhardwaj, the learned counsel appearing for drivers-respondents and Mr. Y. Paul, learned counsel appearing for the owner-respondent, all of them do not object to the grant of the permission to the appellant insurance company in terms of Section 170 of the Motor Vehicles Act by me in this appeal. Even otherwise, I am convinced that in the facts and circumstances of this case the interests of justice were not properly served in the Tribunal not deciding the application filed by the appellant u/s 170 of the Act.

3. Mr. Sharma drew my attention to the following observations of their Lordships of the Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, and I quote:

"(26) For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an inquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made, or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 are satisfied and the award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 170 of the 1988 Act, the same would go contrary to the scheme and object of the Act."

The aforesaid observations of their Lordships in Nicolletta Rohtagi's case (supra), clearly suggest that Sections 149, 170 and 173 of the Motor Vehicles Act, 1988

are part of one scheme and if a different interpretation is given to Section 170 of the Act, such interpretation would run counter to the scheme and object of the Act. These observations read with earlier observations in the same part of judgment to the effect that where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right of filing an appeal in the High Court challenging the award on the ground of quantum of compensation or even on the ground of negligence or contributory negligence of the offending vehicle. The pith and substance of the aforesaid observations, therefore, leads me to hold that even if in a given situation, the Tribunal has not passed an order permitting the insurer appellant to contest the claim petition on grounds in terms of Section 170 of the Act and if insurer appellant in the appeal filed by it in the High Court u/s 173 of the Act satisfies the High Court that conditions precedent embodied in Section 170 of the Act are satisfied and further if the award is adverse to the interests of the insurer appellant, High Court has jurisdiction to itself pass an order in terms of Section 170 and allow the appellant insurer to argue the appeal on grounds available to the owner-insured and thus assail the judgment/award passed by the Tribunal challenging the quantum of compensation or the finding of the Tribunal with respect to negligence or rashness of the driver of the offending vehicle.

4. In my considered opinion conditions precedent for invoking Section 170 of the Act do appear to be satisfied in this case and especially also keeping in view the fact that the Tribunal itself had not passed any order on the appellant's application. Also since in this case, the award is adverse to the interests of the appellant, I feel that the interests of justice shall be properly subserved if the appellant's application is allowed by me in this appeal. This is apart from the "no objection" of learned counsel appearing for all the respondents.

5. The appellant's application u/s 170 of the Act is allowed with the result and consequence that the appellant shall be permitted to challenge the award on all the grounds available to the owner-insured and other respondents in the claim petition.

6. The learned counsel for the parties seek some more time to argue the case. Adjourned. List after four weeks.