
(2003) 11 SHI CK 0013
In the High Court Of Himachal Pradesh

National Insurance Co. Ltd.	Vs	APPELLANT
Mrs. Meena Kumari and Others		RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 149

Citation : (2004) 3 ACC 209

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Judgement

Arun Kumar Goel, J.—Though this application has been contested on behalf of the respondents, however, looking to the facts detailed in the application which is duly supported with the affidavit of Sh. Arun Ahluwalia, Administrative Officer of the appellant Insurance Company at its Divisional Office, Shimla, I am satisfied that delay in filing the appeal was neither wilful nor intentional. At the same time, I am also satisfied that sufficient cause is made out for condonation of delay in filing this appeal. This application is allowed.

F.A.O. No. 577 of 2003:

Heard learned Counsel for the parties present and have also examined the record of the Trial Court with their assistance.

2. Mr. Sharma, learned Counsel for the appellant has made two-fold prayer in this case. Namely, that the driver was not legally authorized to drive the vehicle in question on the day of Accident. Because he did not possess a valid driving licence as envisaged under the provisions of Motor Vehicles Act, 1988. In addition to this, he also pointed out the exorbitant compensation has been allowed, that too without taking note of the provisions of Income Tax Act while assessing the same. For reasons to be recorded hereinafter both these pleas are being rejected at the admission stage.

3. So far plea of driver of the vehicle not holding valid driving licence is

concerned, it being an exclusion meant to succeed in its defence, was required to be proved by the appellant Insurance Company. It hardly needs to be pointed out that all exclusion have to be proved by the appellant. Even otherwise, this matter is no more res integra in view of the decision of Supreme Court in case Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, .

4. In this behalf when a reference is made to the record of the Tribunal below, it is evident that though licence clerk form Amritsar had been summoned. Sufficient opportunity was allowed to the present appellant in this appeal by the Tribunal below. Yet he was not produced and examined. Finally on 2nd December, 2002 last chance was allowed, when amongst other things, it was ordered that the appellant on filing fresh process fee would obtain dasti summons for the service of the witness for the date of fixed. Thereafter the case came up on 20th December, 2002, the next date fixed for examination of the witness as per order dated 2nd December, 2002. Despite last chance, when no steps were taken, evidence of the appellant was closed on 30th December, 2002.

5. On the other hand, there is Ex. RW 1/A photostat copy of the licence of the driver Manish Kumar son of Sh. Gorakh Chand produced by the owner of the vehicle. How this was not the copy of the valid driving licence could not be shown by the learned Counsel. That being the position, submission of Mr. Sharma, Counsel for driving licence is without any legal evidence having been produced during the course of trial before the Tribunal below. Accordingly it is rejected.

6. Now coming to the question of challenge on the quantum of compensation, urged by Mr. Sharma. Suffice it to say that in law in a given situation, appellant could have sought leave of the Tribunal below u/s 170 of the Motor Vehicles Act, 1988 to contest the claim of respondent Nos. 1 to 4 claimants, on all grounds which were open to the owner of the vehicle (Rakesh Walia) respondent No. 6. Record of the Tribunal below shows that no such attempt was made, hi case the appellant genuinely felt that this is a case which was required to be contested on all grounds it ought to have taken care of its interest during the course of trial. Merely because compensation is excessive is by itself no ground enabling this Court to interfere with an award. Reason being that defence of an Insurance Company, like appellant are limited u/s 149 of the Motor Vehicles Act, 1988. So this plea what to talk of an appeal u/s 173 of Motor Vehicles Act, 1988, is not even open under Articles 226/227 of the Constitution of India. See Sadhana Lodh Vs. National Insurance Company Ltd. and Another, and National Insurance Co. v. Soma Devi and Ors. Latest I (2003) A.C.C. 162 : H.L.J. 2003 (H.P.) 982. (F.B.)

7. This is of course subject to exception as contained in Section 170 of the Motor Vehciles Act, 1988, See Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, .

No other point urged.

In view of the aforesaid discussion, there is no ground in this appeal which is dismissed at the admission stage.

No order in view of the orders passed in the main matter Disposed of Accordingly.