(2008) 11 DEL CK 0033

In the Delhi High Court

Case No : C.M. (M) No''s. 1190, 1221 and 1213 of 2008

National Insurance Co. Ltd. APPELLANT

Vs

Sonu Chauhan and Others RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 170

Citation : (2008) ACJ 230

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Pradeep Gaur, for the Appellant; Manish Maini, for the Respondent

Final Decision : Allowed

Judgement

S.N. Dhingra, J.—The petitioner is aggrieved by an order dated 11.7.2008 passed by M.A.C.T. whereby an application of the petitioner u/s 170 of Motor Vehicles Act, 1988 (for short ''the Act'') to permit the petitioner/insurer to contest the claim of the injured on the grounds available to the owner was dismissed. There is no dispute to the fact that owner in this case had become ex parte. The petitioner''s counsel when asked questions to the witness regarding his income, etc. the court disallowed the questions observing that the cross-examination must be confined to the defence as per statutory rights u/s 149(2) of the Act. When an application u/s 170 of the Act was moved by the insurance company, the same was dismissed on the ground that there were no allegations of collusion between the injured and the owner or the driver of the offending vehicle. They were only not participating in the proceedings. The trial court considered that before permission could be granted to contest the petition on any of the grounds available to owner, the Tribunal must be satisfied that the interests of the insurer were going to be affected because of the absence of owner-driver from the proceedings. M.A.C.T. observed that it was not the case of the insurer that accident had not taken place or the injured had not received injuries, it was also not stated in the application that earnings of the injured have been inflated. In view of this, there was no justification to permit the insurer/petitioner to contest the claim of the injured on all or any of the grounds except the statutory defence.

2. this Court in National Insurance Co. Ltd. Vs. Sh. Ramesh Kumar and Another, had considered the case where after filing of written statement the driver-owner absented from the legal proceedings. The court observed that filing of written statement in such an event could be of no value, if the owner does not produce evidence in respect thereof and cross-examine the witnesses of the claimant. The object of Section 170 was amply clear from its provisions that two colluding parties should not avail the benefit of restrictive rights available to insurance company and failure of the person against whom claim is made, to defend the legal proceeding, should not let the matter go uncontested and result into undue advantage to the claimant. this Court was of the opinion that in case of failure to contest by owner-driver, a wider defence was available to the insurance company. The insurance company cannot have this wider defence on merits unless it is granted permission u/s 170 of the Act to cross-examine the witness on this ground.

3. The law is clearly settled by this Court. Where driver-owner does not appeal in the court after filing of written statement or get proceeded ex parte before their evidence is recorded, the insurance company should get a right to cross-examine the witness on the wider defence as available to the owner-driver. The income of the claimant/injured is in special knowledge of the claimant/injured. Merely because insurer has not pleaded that income was not inflated, it cannot be deprived of the right to cross-examine on the question of income. The cross-examination is a tool to dig out truth about the facts claimed by a party. Sometimes the defendant/insurance company may not be knowing the correct income of the party/claimant but can still during cross-examination dig out the truth from the respondent.

4. I, therefore, consider that application was wrongly dismissed. The petitions are accordingly allowed. The insurance company shall be permitted to cross-examine the witness on the issue of income and other defences available to owner-driver.