(2001) 02 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : MP No. CIMA 223/99

National Insurance Company — APPELLANT

Vs

Rattan Chand and Others — RESPONDENT

Date of Decision : 17-02-2001

Acts Referred:
Motor Vehicles Act, 1988 — Section 170

Citation : (2001) KashLJ 262

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : Randeep Singh, Gagan Basotra , C.S.Gupta, Advocates appearing for the Parties

Judgement

1. This appeal arises out of an award passed by the MACT Jammu on 27.2.1999. The life of the deceased was cut short while he was 28 years of

age. His monthly income was proved to be Rs. 6600/. However, the Tribunal has slashed it down to Rs. 4500/ for the reasons that no proof with

respect to payment of income tax was adduced. A multiplier often has been applied and as a result total dependency has been worked out at Rs.

4,02,160/. In addition to this Rs. 14500/, Rs. 10000/, Rs. 2000/ and Rs. 2500/ have been awarded as loss of expectation of life, funeral expenses

and loss of estate etc. Total amount awarded is Rs. 4,16,660/.

2. According to Mr. C.S. Gupta, the compensation awarded is excessive and is violative of the formula laid by the Supreme Court in 1998 SCC

Vol. 8 page 633.

3. I have gone through the judgement. In that judgement the age of the parents of the deceased has not been given while as whole stress of the

argument of Mr. Gupta with regard to application of wrong multiplier. In this case the parents were at the age of 50 and 55 years. However I need

not go to the merits of the case because a objection raised by Mr. Gagan Basotra was with respect to maintainability of the appeal. He has relied

upon the judgement of the Apex Court returned in case titled George vs. N.K. Raju reported in (2000) 4 SCC 130. In this judgement the scope

of right to appeal of the Insurer has been outlined. It is pertinent to place on record that the case before the Apex Court the insurer had been

arrayed as a coappellant and even then the court after holding that he had no grievance to lodge, held that the insured could defend the

proceedings before the Claim Tribunal on certain limited grounds. None of the grounds under subsection 2 of section 149 of the Motor Vehicles

Act exist for the insurer to defend the claim petition. That being so, no right exists for the insurer to file the appeal against the award of the Claim

Tribunal in the present case.

4. Prior to that the Supreme Court in a case titled Shankaraya and another vs. United Indian Insurance Co. Ltd and another reported in 1998 ACJ

page 513 has while discussed the scope of section 170 of the Act held as under:

4. It clearly shows that the insurance company when impleaded as a party by the court can be permitted to contest the proceedings on merit only

if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the insurance company has to obtain order in

writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the insurance company cannot

have wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent

no. 1 insurance company in the claim petition but that was done with a view to thrust the statutory liability on the insurance company on account of

the contract of insurance. That was not an order of the court itself permitting the insurance company which was impleaded to avail of a larger

defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently it must be held that on the facts of the

present case, the respondent no. 1 insurance company was not entitled to file an appeal on merits of the claim which was awarded by the

Tribunal"". 5. Same view was taken by a Full Bench of this court in a case titled United India Fire and General Insurance Company vs Laxmi Shri

Ganjoo and Others reported in 1982 ACJ 470. Para 28 of this judgement, after taking the whole law into consideration, has clinched the issue.

Same reads as under :

The argument of Mr. Ganjoo that the limitations which are set out in Section 96(2) of the Act in the matter of defending a claims petition before

the Tribunal do not extend to appeals filed under Section 110D of the Act by the insurer or that Section 96(2) is not exhaustive, is not sound. The

limitations which are set out in section 96(2) of the Act are implicit and inherent in Section 110D of the Act and have to be read into that Section.

Before a person can file an appeal under Section 110D of the Act he has to be an ""aggrieved party"". The expression ""aggrieved party"" contains the

inherent limitation in the matter of filing an appeal. The expression ""aggrieved"" in the context of Section 110D of the Act has to be interpreted and

understood in common parlance (See in this connection Jasbhair Motibhair Desai vs. Roshan Kumar Haji Bashir Ahmed). It is not possible to give

an exhaustive definition of the expression ""aggrieved party"" and the expression has to be interpreted in the context in which it appears in a particular

statute. As a general principle, it has been held by the courts 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 the other way. The

order must cause him the legal grievance by wrongfully depriving him of something. If he was not entitled to that relief in the first place, he cannot

be aggrieved if the relief was denied to him but if he was entitled to it 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 110D where the claim or defences available to that party did not find

favour with the Tribunal in making an award. The party would be 'aggrieved' only to that extent and no further. It is unimaginable that an insurer,

which before the Tribunal had only limited defences can file an appeal on other grounds also. An appeal is rehearing of the claims petition and is

therefore a continuation of it. It is elementary that in an appeal a party cannot be allowed to raise a defence which was not available to it in the

forum below. It therefore, follows that an ""aggrieved party"" for the purpose of Section 110D would only be such a party which is aggrieved of the award on the ground that its defence or claim as was available to it and was set up before the Tribunal did not find favour with it. If a particular

defence was not available to a party before the Tribunal, the question of it not having found favour with the Tribunal does not arise because no

party can be aggrieved of any adverse decision on the ground which was not available to it. Thus, it is manifest that whereas insured would have

the right to challenge an award on all the grounds which were available to it under Section 96(2) of the Act"".

6. Here in the present case admittedly the insurer has not obtained permission of the Tribunal in terms of Section 170 and as such his challenge to

the quantum of compensation by way of this appeal is not maintainable. That being the position of law, I find that this appeal is not maintainable and

is accordingly dismissed. No costs.

7. May it also be placed on record that Mr. C.S. Gupta tried to find fault with the award because the same, according to Mr. Gupta was passed in

favour of a brother who was at the age of 25 years and not a dependant. This is of course, a plea taken in the application but it was not a case of

the appellant before the Tribunal. The law on the point is clear that the points not raised before the Trial court cannot be permitted to be raised at

the appellate stage. In this regard I am supported by the following judgements of the Apex Court

AIR 1966 SC 1017

AIR 1967 SC 1193

AIR 1997 SC 10/1

Therefore, I am not in a position to address myself to this aspect of the case.