
(2007) 10 MP CK 0007
In the Madhya Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Jai Singh and Another

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2008) ACJ 1917

Hon'ble Judges : Shubhada R. Waghmare, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—Heard on I.A. No. 1380 of 2005. This is an application made by applicant under Order 22, Rule 4 of CPC for substitution of legal representatives of deceased Jai Singh, respondent No. 1, who died pending appeal on whom according to applicant right to sue has devolved consequent upon the death of respondent No. 1. The application is within time. The L.Rs. were noticed. They are served and duly represented. In this view of the matter and on consideration of aforesaid facts, the application is allowed. The name of respondent No. 1 be accordingly, deleted and in his place, the names of legal representatives be brought on record as respondent Nos. 1(a) to 1(e) as specified in the application. Memo of appeal be accordingly, amended within a week.

2. This is an appeal, filed by insurance company u/s 173 of the Motor Vehicles Act (for short called "the Act"), against an award dated 30.9.2004, passed by the learned Member, Motor Accidents Claims Tribunal, Indore in Claim Case No. 236 of 2004 whereby the Tribunal has allowed in part the claim petition of Jai Singh, respondent No. 1, filed u/s 163-A of the Act and awarded a total compensation of Rs. 7,90,268 for the injuries sustained by him in vehicular accident.

3. Facts necessary for the disposal of this appeal need mention in brief infra. In fact they lie in a narrow compass.

4. Jai Singh, original respondent No. 1, was driver of truck No. MP 09-KB 9210. On 29.1.2004 while coming from Delhi to Indore, he (Jai Singh) met with an accident due to sudden failure of brakes of the truck which he was driving. As a result thereof, he (Jai Singh) suffered serious injuries on his body. Indeed injuries were so serious that Jai Singh became a paralytic patient and confined to bed totally as permanent disabled person. He, then filed a claim application u/s 163-A of the Act against the insurer and the insured of the offending vehicle in question, i.e., truck. The case was contested by the insurance company (appellant) on usual defences. However, no permission as required by Section 170 of the Act was obtained by the company to contest the claim on all the grounds. Claimant then adduced evidence. By impugned award, the Tribunal partly allowed the claim petition of the claimant Jai Singh and awarded to him a total compensation of Rs. 7,90,268 for the injuries sustained by him and accordingly, passed award against the respondents jointly and severally. It is against this award, the insurance company has filed this appeal.

5. Heard Mr. S.V. Dandwate, learned Counsel for the appellant and Mr. S. Patwa, learned Counsel for respondent No. 1.

6. Learned Counsel for the appellant insurance company while assailing the legality of the impugned award in substance contended that accident in question does not give rise to filing of claim petition for claiming compensation. He in the alternative contended that compensation awarded by the Tribunal is on a higher side and hence, liable to be reduced. He also contended that liability of company in any event, cannot exceed more than what is provided under Workmen's Compensation Act by virtue of Section 147(1) proviso and hence, it is liable to be reduced to that extent. He lastly urged that since claimant-respondent No. 1 died though subsequent to passing of the impugned award but during pendency of appeal and hence, the whole claim petition out of which this appeal arises has rendered infructuous so also the impugned award and hence, both, i.e., claim petition and award be dismissed as having rendered infructuous and not capable of being enforced on the death of claimant.

7. In reply, the learned Counsel for the respondents, i.e., legal representatives of claimant-respondent No. 1 contended that the appeal itself is not maintainable at the instance of insurance company because no permission as required u/s 170 of the Act was admittedly obtained by the company from the Tribunal. The learned Counsel contended that the entire argument of learned Counsel for the appellant insurance company as taken note of supra in support of this appeal is based on those defences which are not available to the company under the Act but are available only to the insured. In other words, his submission was that none of the arguments of learned Counsel for appellant advanced in this appeal falls within the four corners of Section 149(2) and, therefore, it cannot be considered in this appeal they being available only to insured. Learned Counsel contended that even though the claimant-respondent No. 1 died pending appeal but award which was passed in his favour cannot be set aside on the ground of it being rendered

infructuous on his death. He urged that impugned award has now become an actionable claim and being in the nature of an estate of the deceased, the legal representatives of deceased have a right to defend the award validly passed in favour of deceased by the Tribunal who was very much alive on the date of passing of the award.

8. Having heard learned Counsel for the parties and having perused record of the case, we find force in the submission of learned Counsel for the respondent. As a consequence we are inclined to dismiss the appeal.

9. The question as regards the right of insurer to contest the claim and file the appeal under the Act remains no longer *res Integra* and stands decided by the decision of Supreme Court in the case in *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, . This is what their Lordships held:

(15). Parliament, while enacting Sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in Sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in Sub-section (2) of section 149. If we permit the insurer to take any other defence other than those specified in Sub-section (2) of Section 149, it would mean we are adding more defences to insurer in the statute which is neither found in the Act nor was intended to be included.

(16) For the aforesaid reasons, the statutory defences which are available to the insurer to contest a claim are confined to what are provided in Sub-section (2) of Section 149 of 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds.

(27) ...The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premise and that the insured or the persons against whom a claim has been made has not filed any appeal. Section 149(2) of the 1988 Act limits the insurer's appeal on those enumerated grounds and the appeal being a product of the statute, it is not open to an insurer to take any other plea other than those provided in Section 149(2) of 1988 Act....

(31) ...Unless the conditions precedent specified in Section 170 of 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the grounds available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to

contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case, where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing an appeal on the grounds specified in Sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer *res Integra* that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

10. In our considered view when admittedly in this case, no permission as required by Section 170 of the Act was obtained by the insurance company for contesting the claim petition, they do not have right to file the appeal at least in so far as it relates to those defences which are outside the purview of Section 149(2). In other words, in the absence of permission not being granted by the Tribunal as required u/s 170 of the Act, to the company, they cannot contest the case either before the Tribunal or in appeal on those defences which are not available to the insurer u/s 149(2) *ibid*. Similarly, we find that entire argument of learned Counsel for the appellant was based on the issues relating to negligence and/or quantum of compensation. These issues can be raised only by insured and not by insurer. It is for the reason that no permission u/s 170 *ibid* was obtained by the insurer. It is only when the permission is obtained from the Tribunal by the insurer, they become eligible to question these findings on merits in appeal. Such is not the case here.

11. We are, therefore, not inclined to entertain the submissions of the learned Counsel for the appellant when he attacked the legality of the award on the ground of maintainability of proceedings and in consequence to the excessiveness of compensation awarded to the claimant. In our view, such submission is beyond the purview of Section 149(2) *ibid* and hence, cannot be allowed to be raised at the appellate stage by the insurance company for want of permission u/s 170 *ibid*.

12. We are also not inclined to accept the submission of learned Counsel for the appellant when he contended that since the injured-respondent No. 1 has died after the award was passed, i.e., during pendency of appeal and hence, award has become unenforceable at the instance of his legal representatives. In our view, once an award is passed in favour of claimant, injured, by the Tribunal, then it becomes an asset (actionable claim) capable of being enforced by the legal representatives of deceased on whom the estate has devolved. It is ripen into an estate in the hands of the claimant and hence, if he (claimant) dies pending appeal, the legal representatives become entitled to defend the award in appeal. The only embargo put on the rights of legal representatives in such case is that they do not have any right to claim enhancement in the compensation awarded by the Tribunal in favour of claimant because that right was available only to the injured, being personal in nature. Such right abates on his death. Such is not the

case here. In this case, legal representatives of the claimant-injured are only defending the award validly passed in favour of the deceased by the Claims Tribunal. In our view, it is legally permissible.

13. Learned Counsel for the appellant placed reliance on the decision in Appaji (since deceased) and Another Vs. M. Krishna and Another, and National Insurance Co. Ltd. Vs. Prembai Patel and Others, , for assailing the award. In our view, since we have repelled the main submission of learned Counsel for appellant supra, these decisions cannot be pressed in service by learned Counsel for the appellant. They are of no assistance to appellant so far as facts of this case are concerned.

14. In view of foregoing discussion, we do not find any merit in the appeal. It is, accordingly, dismissed. As a consequence, the interim stay granted by this Court is recalled.

No costs.