

(2003) 05 AHC CK 0113
In the Allahabad High Court
Case No : F.A.F.O. No. 1268 of 2003

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Usha Devi and Others

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

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

Citation : (2003) 3 ACC 172 : (2004) ACJ 1927 : (2003) 4 AWC 2965

Hon'ble Judges : S.P. Srivastava, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Vinay Khare, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned counsel for the Insurer/ appellant.

2. The appellant has filed the present appeal u/s 173 of the Motor Vehicles Act feeling aggrieved by the award of the Motor Accident Claims Tribunal, determining an amount of Rs. 6,72,048 as just compensation to which the dependants of the deceased Udai Veer Singh were found entitled to on account of his untimely death who met with an accident involving the offending motor vehicle, a Truck which had been insured by the present appellant covering the risk.

3. The Motor Accident Claims Tribunal, on a careful consideration of the evidence and materials brought on record, had come to the conclusion that the deceased Udai Veer Singh was aged about 38 years. The income of the deceased was found to be Rs. 7,000 per month. The family of the deceased was quite large. Besides his wife, he had left behind five children. After excluding the 1/3rd of the income of the deceased which he might have been spending upon himself, the Tribunal had determined the extent of annual dependency to be Rs. 56,004 only for calculating the compensation. The Tribunal utilising the multiplier of 12 had calculated the amount of compensation.

4. The only submission urged and pressed in support of the appeal by the learned counsel for the appellant is that taking into consideration the nature of the accident, the liability for the payment of the amount of compensation fastened upon the Insurer ought to have been reduced in view of the contributory negligence of the deceased himself who was travelling on a Scooter.

5. The Tribunal has found in the present case that the offending motor vehicle a truck was being driven negligently and rashly which had resulted in the accident. The effort of the learned counsel for the appellant clearly appears to get reduced the liability for the payment of the compensation awarded by the Tribunal.

6. So far as this aspect of the matter is concerned, it is not disputed by the learned counsel for the appellant that no permission as envisaged u/s 170 of the Motor Vehicles Act had been obtained by the Insurer. In the aforesaid circumstances, the ratio of the decision of the Apex Court rendered in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, stands clearly attracted and the Insurer appellant cannot be held to be entitled to challenge the quantum of compensation awarded by the Tribunal.

7. The legislative policy underlying the various provisions of the Motor Vehicles Act clearly indicates that the right to appeal contemplated u/s 173 of the said Act, so far as the Insurer is concerned, is not an absolute right but has been made subject to certain conditions. The Statute does not recognise or provide for any remedy to an Insurer against an award, if the requisite conditions are not satisfied. In its decision in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, the Apex Court had clearly indicated that in the absence of the grant of permission envisaged u/s 170 of the Motor Vehicles Act, it is not open to an Insurer to challenge the quantum of compensation awarded raising a defence other than the statutory defences permissible under the Act, which may be available to an Insured or owner. The legislative intent cannot be set at naught by permitting recourse to a remedy which is not contemplated for the Insurer. It is, therefore, obvious that in the absence of any permission as contemplated u/s 170 of the Motor Vehicles Act, the plea raising defence other than the statutory defences cannot be permitted to be raised by an Insurer in any proceeding whether it be a revision u/s 115 of the CPC or a writ petition under Article 227 of the Constitution of India. Doing so will tantamount to violation of legislative intent/policy underlying the provisions of the Motor Vehicles Act as amended.

8. It may be noticed that the question as to whether the Insurance Company can challenge the quantum of compensation u/s 115 of the CPC or under Article 227 of the Constitution of India had come up for consideration before a Full Bench of the Madhya Pradesh High Court in its decision in the case of B.S. Sharma Vs. State of Haryana and Another, After taking into consideration a large number of decisions of various Courts including the Apex Court, the Full Bench had come to the conclusion that the remedy of revision u/s 115 of the CPC or a writ petition under Article 227 of the Constitution of India was not available to an Insurer. In

that case, the Insurer had assailed the award of the Motor Accident Claims Tribunal through a Civil Revision u/s 115 of the Civil Procedure Code, challenging the quantum of compensation. Before the Full Bench, it had been urged that the Insurance Company could not challenge the quantum of compensation and as it had to remain confined to the limited defences available to the Insurance Company.

9. No justifiable ground has been made out for taking a departure from the view expressed by the Full Bench in the case of New India Assurance Company Ltd. (supra).

10. The learned counsel for the appellant has tried to assail the findings returned by the Motor Accident Claims Tribunal against it but has not been able to demonstrate that the said findings can be taken to be suffering from any such legal infirmity which may justify an interference by this Court. These findings are amply supported and warranted by the evidence and the material brought on record.

11. This appeal is devoid of merit which deserves to be and is hereby dismissed.

12. As prayed, the amount of Rs. 25,000 deposited in this Court by the appellant u/s 173 of the Motor Vehicles Act be remitted to the Motor Accident Claims Tribunal concerned within one month from the date an application is filed by the appellant for the purpose so that it may be adjusted against the amount required to be deposited under this order.