

(2003) 07 AHC CK 0062
In the Allahabad High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Subhash Kumar and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2003) 3 ACC 388 : (2003) 6 AWC 4694

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

Bench : Division Bench

Judgement

S.P. Srivastava, J.—Heard the learned Counsel for the insurer - appellant as well as the learned Counsel representing the claimant-respondent No. 1.

Perused the record.

The Insurer-appellant has filed the present appeal u/s 173 of the Motor Vehicles Act feeling aggrieved by the award of an amount of Rs. 3,20,200/- (Rs. Three lacs twenty thousand and two hundred only) determined by the Motor Accident Claims Tribunal, as just compensation to which the injured claimant was found entitled to on account of his suffering grievous injuries resulting in 40% permanent disability, in an accident involving the offending motor vehicle - a bus bearing registration No. UP 78/8319.

2. The learned Counsel for the appellant has stated that no effort had been made by the Insurer to obtain any permission as envisaged u/s 170 of the Motor Vehicles Act. It is, therefore, obvious that the scope of the appeal is limited, as the insurer in the absence of the requisite permission u/s 170 of the Motor Vehicles Act cannot challenge the quantum of compensation.

3. It may be noticed that the effect of the omission by the insurer to obtain permission u/s 170 of the Motor Vehicles Act was considered by the Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, .

4. The Apex Court after taking into consideration various aspects and various provisions of the Motor Vehicles Act had come to the conclusion that in the absence of the permission as envisaged u/s 170 of the Motor Vehicles Act, the ground on which the quantum of compensation can be challenged by an owner cannot be said to be available to the insurer.

5. In the aforesaid decision the Apex Court had indicated that the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.

6. In the aforesaid decision the Apex Court had further indicated that by virtue of Section 170 of 1988 Act, where in course of an inquiry the Claims Tribunal is satisfied that, (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the person against whom the claim has been made has failed to contest the claim the Tribunal may, for reasons to be recorded in writing implead the insurer and in the case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus unless an order passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds, which are available to the insurer or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation, Sections 149, 170 and 173 are part of one scheme and if any different interpretation to Section 172 of the 1988 Act, is given the same would go contrary to the aim and object of the Act.

7. The ratio of the aforesaid decision stands attracted in the facts and circumstances of the case. It is, therefore, obvious that it is not permissible in law to the insurer to challenge the quantum of compensation determined by the Tribunal in the facts and circumstances of the present case.

8. The learned Counsel for the appellant has tried to assail the finding returned against it by the Motor Accident Claims Tribunal on the question of quantum of amount as determined as just compensation. The findings are based on the evidence on record and could not be demonstrated to be suffering from any such legal infirmity, which may justify an interference therein.

9. Taking into consideration the facts and circumstances, as brought on record, no justifiable ground has been made out for any interference in the impugned award. Further the quantum of compensation cannot be held to be unjust.

10. The appeal is totally devoid of merits, which deserves to be and is hereby

dismissed in limine.

As prayed, the amount of Rs. 25,000/- deposited in this Court by the insurer-appellant u/s 173 of the Motor Vehicles Act be remitted to the Motor Accident Claims Tribunal concerned so that it may be disbursed to the claimant.