
(1998) 12 KAR CK 0037
In the Karnataka High Court
Case No : M.F.A. No. 2767 of 1998

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Gowramma and Another

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Motor Vehicles Act, 1939 — Section 96 (2), 96 (6)
Motor Vehicles Act, 1988 — Section 149 (2), 149 (7), 170, 173
Workmens Compensation Act, 1923 — Section 30

Citation : (2000) ACJ 1319

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : S.P. Shankar, for the Appellant; S.V. Tilgul, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—Heard Mr. S.P. Shankar, learned counsel for the appellant and Mr. S.V. Tilgul, learned counsel for the respondents.

The respondents had also applied for being permitted to withdraw the amount, but Mr. Tilgul wanted the appeal to be disposed of and raised the preliminary objections to the maintainability of the appeal itself u/s 30 of the Workmen "s Compensation Act read with Section 149(2) of the Motor Vehicles Act, for short, "the WC Act" and "MV Act" respectively.

2. Mr. Tilgul, learned counsel for the respondents submitted that the present appeal has been filed by the insurance company alone and the grounds for challenge relate only to the quantum of the compensation awarded. He submitted that in view of Section 149(2), the defences open to the insurance companies are likely those which relate to the liability of the company or extent of the liability of the company under insurance policy which circumscribes the ground on which the insurance company can resist the claim made before the authority dealing with the motor accidents claims compensation. He submitted the grounds on which the award can be challenged by the insurance company as

well are limited and controlled or provided by Section 149(2) of MV Act because a person cannot be deemed to be aggrieved by finding with respect to the defences not available to him. Mr. Tilgul submitted, as such the defences available are limited, and so appeal u/s 30 of the WC Act can be maintainable, provided it satisfies the two grounds. Firstly, that the ground of challenge to the award is based on one of those defences which are available to it u/s 149(2) and secondly it must raise a substantial question of law. Mr. Tilgul submitted that in the present case, what has been challenged is the quantum of compensation awarded. He submitted that what is the cause for accident or what is the quantum of the compensation to be awarded is not within the scope of defences available to the insurer, though no doubt in respect of cause for accident, or in respect of quantum of compensation, it is open to the insured to challenge. As such he submitted that the appeal challenging only the quantum of compensation awarded, is not maintainable and is no appeal in the eyes of law and so the appeal may be dismissed as not maintainable.

3. The contentions of Mr. Tilgul have been hotly contested by Mr. S.P. Shankar, learned counsel for the appellant. Mr. Shankar submitted that right of appeal u/s 30 of the WC Act is to be taken independent of the Motor Vehicles Act and the provisions of Workmen's Compensation Act are not controlled by Section 149(2) of MV Act. He submitted that all grounds which raise or involve substantial question of law are available to the appellant insurer as the final liability to pay compensation falls on the insurance company. That there is nothing in Section 30 to restrict the rights of insurance company to challenge the award on the grounds of defence covered by Section 149(2) of Motor Vehicles Act.

4. I have applied my mind to these contentions raised by the counsel for the parties. Sections 149(2) and 149(7) are analogous to Sections 96 (2) and 96 (6) of MV Act, 1939. Sections 96 (2) and 96 (6) have been the subject-matter of consideration before their Lordships of the Supreme Court in the case *British India General Insurance Co. Ltd. v. Captain Itbar Singh* 1958 65 ACJ 1 (SC), in which almost the same contention was advanced on behalf of the insurance company and their Lordships of the Supreme Court considered the scheme of Sections 96 (2) and 96 (6). In paras 5, 6 and 9, their Lordships observed that:

To start with it is necessary to remember that apart from the statute an insurer has no right to be made a party to the action by the injured person against the insured causing the injury. Sub-section (2) of Section 96 however gives him the right to be made a party to the suit and to defend it. The right therefore is created by statute and its content necessarily depends on the provisions of the statute. The question then really is, what are the defences that Sub-section (2) makes available to an insurer? That clearly is a question of interpretation of the sub-section.

Now the language of Sub-section (2) seems to us to be perfectly plain and to admit of no doubt or confusion. It is that an insurer to whom the requisite notice of the action has been given "shall be entitled to be made a party thereto and to

defend the action on any of the following grounds, namely", after which comes an enumeration of the grounds. It would follow that an insurer is entitled to defend on any of the grounds enumerated and no others. If it were not so, then of course no grounds need have been enumerated. When the grounds of defence have been specified, they cannot be added to. To do that would be adding words to the statute.

Three reported decisions were cited at the Bar and all of them proceeded on the basis that an insurer had no right to defend the action except on the grounds mentioned in Sub-section (2). These are *Sarupsing Mangatsing Vs. Nilkant Bhaskar*, ; *Royal Insurance Co. Ltd. Vs. Abdul Mahomed Meheralli*, ; and *Proprietor, Andhra Trading Co. v. K. Muthuswamy* AIR 1956 Mad 464. It does not appear, however, to have been seriously contended in any of these cases that the insurer could defend the action on a ground other than one of those mentioned in Sub-section (2).

(Emphasis added)

Their Lordships thereafter made a reference to Sub-section (2). Their Lordships further observed:

Sub-section (6) also indicates clearly how Sub-section (2) should be read. It says that no insurer, to whom the notice of the action has been given shall be entitled to avoid his liability under Sub-section (1) otherwise than in the manner provided for in Sub-section (2).

In para 8, their Lordships observed:

We therefore think that Sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is not specified in it.

5. When the defences open are limited to a party, then if a party can be said to be aggrieved from the award or judgment, if decision is given against him in respect of the defences available to him before the trial court, i.e., Tribunal, scope of defences or ground of challenge in appeal cannot be expanded at the appellate stage. Therefore right of appeal is to be taken to be confined and controlled by the defences available under the law and a harmonious construction of two sections, whether under the provisions of Section 173 of the MV Act or u/s 30 of the WC Act, right of appeal will be confined to the grounds of defences available u/s 96 of the MV Act, 1939 or u/s 149(2) of the new MV Act, 1988. Sub-section (7) of Section 149 is the same as Section 96 (6) and when these Sections 96 (6) and 149 (7) provide that no other grounds shall be available to avoid liability, then if we interpret Section 30 of WC Act or Section 173 of MV Act as giving the insurance company wider scope of defence at the appellate stage it will have the effect of rendering provisions of Sections 149(2) and 149(7) as redundant.

6. It is one of the well settled principles of law that interpretation should be given

to the provisions in such a manner that no provisions are rendered redundant and harmonious construction has to be made. Taking Section 149 (2) and (7) of the MV Act read with Section 30 of the WC Act, in my opinion the scope of the appeal, that is, the grounds available to the insurance company at the stage of the appeal, are confined firstly to the grounds of defences which are being made available or which are available u/s 149(2) read with Section 149(7). The second rider is that any of these grounds if raised at the appellate stage the appellant insurer has to show and establish that the ground concerned raises the substantial question of law and not a mere question of appreciation of evidence. This question of interpretation of Section 30, WC Act qua Section 149 (2) and (7) of MV Act had arisen before this court also in very many cases.

7. This court in the case of United India Insurance Company Limited, Bangalore Vs. Venkataraju and Another, , had laid down the law as above, after detailed consideration of the matter, the case-law and including the Division Bench decision of this court in New India Assurance Co. Ltd. Vs. Raja Naika and another, , as well as the Division Bench decision of the Allahabad High Court in the case of New India Assurance Company Ltd., Etawah Vs. Smt. Shakuntala Devi, . In Allahabad decision, the Division Bench has expressed the opinion:

Insurer is not entitled to raise those grounds of defences which are available to the insured and so question relating to the compensation, its correctness or otherwise is not open to challenge.

8. The present appeal being confined only to the quantum of compensation and as per the right of appeal it was not open and available to the appellant insurer to challenge the quantum, the appeal has to be dismissed as being not maintainable, particularly when it has not been the case that any leave was sought or obtained u/s 170 of the Act. Thus considered the present appeal is not maintainable, as such is hereby dismissed.

The appellant has deposited the entire amount of compensation as pointed out by Mr. Shankar, learned counsel. Let the amount deposited be paid to the claimant, respondent No. 1, by way of payee account bank draft. The bank draft may be allowed to be issued in the name of respondent No. 1.