
(2008) 02 GAU CK 0100
In the Gauhati High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
L. Hekuvi Sumi and Others		RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 170

Citation : (2009) ACJ 2824

Hon'ble Judges : Mutum B.K. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mutum B.K. Singh, J.—This appeal is directed against the judgment and award dated 15.1.2007 passed by learned Member, Motor Accidents Claims Tribunal, Dimapur in M.A.C. Case No. 5 of 2006 awarding compensation of Rs. 2,67,000 to the claimant-respondent No. 1.

2. That necessary facts leading to the filing of the present appeal are that the claimant-respondent No. 1 filed a claim petition before the learned Member, Motor Accidents Claims Tribunal at Dimapur (hereinafter referred to as "the Tribunal") for a compensation of Rs. 5,28,640 alleging that on 3.10.2002 at about 3.30 p.m. he sustained injuries on his chest and right ribs in a vehicular accident while travelling in a bus bearing No. NL 06-B 0132, against the owner, driver of the vehicle and the appellant insurance company.

3. Claimant-respondent No. 1 claimed himself to be aged about 30 years at the time of accident, businessman by profession and earning about Rs. 5,000 per month. According to the claimant, he suffered 35-40 per cent permanent disability because of the said accident. The appellant insurance company filed written statement on 10.3.2006 denying the claim of the claimant-respondent No. 1. The driver and owner of the offending vehicle also filed a joint written statement alleging that the claim of the claimant-respondent No. 1 was unreasonable and highly excessive and liable to be quashed. It was also alleged

that the offending vehicle was covered by a Comprehensive Policy of National Insurance Co. Ltd. and filed vehicle registration certificate, driving licence, the insurance policy certificate, etc.

4. The Tribunal examined the claimant-respondent No. 1 and the doctor, who had examined the claimant-respondent No. 1. No defence witness on behalf of the insurance company as well as the driver and owner of the vehicle was produced despite reasonable opportunities given to them. On 8.11.2006 examination of the defence witness was closed and fixed the case on 21.11.2006 for final argument. On 8.1.2007 both the parties filed their respective written arguments. The Tribunal, thereafter, passed the impugned judgment and award on 15.1.2006 taking the income of the claimant to be Rs. 2,500 per month and holding that the claimant-respondent No. 1 suffered 50 per cent permanent disability and directed the insurance company to indemnify the vehicle owner by depositing the awarded amount within 30 days.

5. Heard Ms. A. Modi, learned Counsel appearing for appellant insurance company and Mr. B.N. Sharmah, learned Counsel appearing for claimant-respondent No. 1. None appears on behalf of respondent Nos. 2 and 3 despite proper service of notice.

6. Ms. Modi, learned Counsel appearing for the appellant submits that the Tribunal passed the impugned judgment and award without any application of mind by mis-appreciating the evidence on record and erroneously opined that the claimant-respondent No. 1 suffered from 50 per cent permanent disability contrary to the evidence that the claimant-respondent No. 1 was in the hospital only for one day and continuing his business. From the above submission, it is clear that the point under challenge in the appeal is the quantum of compensation awarded by the Tribunal. Per contra, the learned Counsel appearing for the claimant-respondent No. 1, at the outset has strenuously contended that the appeal is not maintainable as no reasoned order was passed by the Tribunal u/s 170 of the Motor Vehicles Act, 1988 (for short "the Act"). The learned Counsel further submits that the appellant had not made any application before the Tribunal for grant of permission to defend the proceeding on merit u/s 170 of the Act. The respondent Nos. 1 and 2 contested the proceeding by filing written statement as well as written argument. Hence, the appeal is liable to be dismissed.

7. I have carefully examined the judgment and records of the learned Claims Tribunal. It is settled principle that the insurance company when impleaded as a party by a Tribunal may be permitted to contest the proceedings on merit if the conditions precedent contained in Section 170 of the Act are fulfilled, otherwise the defences of the insurance company are to be confined only to those provided u/s 149(2) of the Act. Section 170 of the Act provides that where in the course of an inquiry, the Claims Tribunal is satisfied that:

(a) there is collusion between the person making the claim and the person

against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

8. A plain reading of the provisions of Section 170 of the Act it is explicit that the insurance company in order to defend the case on merit, (1) has to obtain an order in writing from the Tribunal and (2) such order should be a reasoned order. It is implicit that the insurance company has to file an application before the learned Tribunal during the course of proceeding satisfying the conditions that there is a collusion between the claimant and the persons against whom the claim is made and the later has failed to contest the claim. Unless the above conditions are satisfied, the insurance company cannot have any defence touching to the merit of the claim other than what are available u/s 149 (2) of the Act. On this point, learned Counsel appearing for the claimant-respondent No. 1 relied upon the decisions of the Hon"ble Apex Court in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, and National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others,

9. In Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, the Hon"ble Apex Court held that "though 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 contract of the insurance. That was not an order of the court itself permitting the insurance company which was impleaded to avail of a larger defence on merit unless two conditions mentioned in Section 170 of the Act are satisfied". In National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, the Hon"ble Apex Court also observed that where the conditions precedent embodied in Section 170 of the Act are satisfied and the Claims Tribunal passed an order permitting the insurer to avail of the grounds available to the person against whom the claim is made. The insurer can contest the claim on such ground and in case of an adverse award, can file an appeal challenging the quantum of compensation for the finding regarding the negligence of the offending vehicle.

10. The ratio laid down in the above decisions is that when the conditions precedent u/s 170 of the Act are satisfied, the insurance company can challenge the merit of the proceeding in appeal. Reverting to the facts of the present case, the claim petition was filed against the owner and driver of the offending vehicle and insurance company was also impleaded as a party in the proceeding. Besides the insurance company, the driver and the owner of the vehicle contested the claim of the claimant by filing written statement as well as the written argument.

No petition was filed by the insurance company to avail of the grounds available to the person against whom the claim was made. It is the duty of the learned Tribunal to pass a reasoned order while granting permission u/s 170 of the Act. In the instant case, the learned Tribunal, without assigning any reason, passed a cryptic order on 8.11.2006, which runs as follows:

Permission u/s 170 of the Act passed.

Such order is not in consonance with the provisions of law. The learned Tribunal, either on the basis of an application filed by the insurance company or on its own motions, before passing an order u/s 170 of the Act should satisfy the existence of the above two conditions precedent and such satisfaction shall be objective satisfaction basing on the facts and circumstances of the case and the reasons for satisfaction must be recorded in writing. In the case at hand, learned Tribunal has not given reason while passing the order u/s 170 of the Act. The learned Tribunal should not have undermined the provisions of law by passing such cryptic order and the same cannot be treated as an order passed in accordance with the provisions of Section 170 of the Act.

11. In the light of the above discussion and observations, I find force in the submission made by learned Counsel for the claimant-respondent No. 1. The insurance company has no locus standi to file the present appeal challenging the quantum of award passed by learned Member, Motor Accidents Claims Tribunal in M.A.C. Case No. 5 of 2006. Resultantly, this appeal is dismissed as not maintainable in law. No order as to costs.