

(2000) 07 AHC CK 0137
In the Allahabad High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Nanhoomal Sharma and Another

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2002) 3 ACC 663

Hon'ble Judges : Sudhir Narain, J; Krishna Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhir Narain and Krishna Kumar, JJ.—This appeal has been filed against the judgment and order (award) dated 21.8.1999 passed by the Motor Accident Claims Tribunal (IV Additional District Judge, Aligarh) in Motor Accident Claim Case No. 79 of 1997 whereby the Tribunal awarded a sum of Rs. 2,55,000/- along with interest to the claimant-respondent.

2. The Tribunal has allowed the aforesaid compensation because of the injuries received by the claimant-respondent on various counts.

3. We have heard the learned Counsels for the parties. The learned Counsel for the claimant-respondent raised a legal objection that the appellant being the insurer, can only raise pleas, in the petition as well as in the appeal, which were available to the appellant u/s 149 of the Motor Vehicles Act. It is contended by the learned Counsel for the respondent that the appellant cannot argue for reduction in the compensation allowed because this plea was not covered u/s 149 of the Act.

4. Taking a cue from the decision of Hon''ble Apex Court in Chinnama George and Others Vs. N.K. Raju and Another, learned Counsel for the respondent argued that the High Court was incompetent to reduce the amount of compensation allowed by the Motor Accident Claims Tribunal.

5. The learned Counsel for the appellant has placed reliance upon the decision of this Court in *United India Insurance Co. Ltd. Vs. Manish Porwar and Others*, wherein it was held that where the owner and driver neglected or failed to contest the claim, the Appellate Court can go into the question relating to illegality or arbitrariness in computing the amount of compensation awarded by the Tribunal. It was also held that the Appellate Court can certainly look into and consider such submissions.

6. As far as the present case is concerned, it is clear that the driver was not made a party and the owner in spite of sufficient service did not appear nor filed a written statement nor contested the case. The case was only contested on behalf of the Insurance Company, the appellant. It is, thus, clear that the owner neglected and failed to contest the claim. In the case relied upon by the learned Counsel for the respondents, the owner has contested the case and even filed the appeal before the High Court and, therefore, certainly the Insurance Company could not take plea in defence apart from those provided u/s 149 of the Act because the other pleas could be taken by the owner. But when, as in the present case, the owner failed to contest the claim, there was nobody to raise the plea about the quantum of compensation to be awarded to the claimant. Therefore, it was in the interest of justice that the Insurance Company should have been allowed to raise those pleas, which were not covered u/s 149 of the Motor Vehicles Act. The case-law of this Court, as cited above, can, therefore, be relied upon to consider the argument of the appellant in respect of quantum of compensation.

7. Learned Counsel for the appellant contended that the Tribunal did not base its finding in respect of quantum of compensation on specific evidence rather fixed the compensation on surmise and presumption. Emphasis was given by the learned Counsel for the appellant in respect of disability allegedly suffered by the claimant. It is a fact that the Tribunal examined the disability of the claimant, who was present in the Court, but that itself was not a ground taken by the Tribunal in fixing the quantum of compensation, rather the Tribunal also took into consideration the medical certificate, which has been discussed in the judgment and whereby the claimant had suffered disability to the extent of 50 per cent and on the basis of the said disability, it was held by the Tribunal that the claimant needs the service of a man throughout his further life and, accordingly, fixed the quantum of compensation. From the impugned judgment, it is clear that the claimant got his treatment from Apollo Hospital, New Delhi and had submitted sufficient documentary evidence on the basis of which the Tribunal fixed the amount of compensation.

8. There is nothing in the judgment of the Tribunal which could suggest that the amount of compensation fixed on different counts by the Tribunal in any way suffers from any impropriety or any illegality. The compensation awarded is proper. There is no merit in this appeal. It is accordingly dismissed.