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(2008) 02 CHH CK 0038

In the Chhattisgarh High Court

Oriental Insurance Co. Ltd. APPELLANT

Vs

Nathaniyal and Others RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 170, 173

Citation : (2008) 3 MPHT 82 : (2008) 2 MPJR 9

Hon'ble Judges : Rajeev Gupta, C.J;Dhirendra Mishra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.

Heard learned Counsel for the parties on I.A. No. 1012/2000 (application for condonation of delay in filing the appeal).

On due consideration of the submissions of learned Counsel for the parties, we are satisfied that the appellant/Insurance Company has succeeded in showing sufficient cause for the delay in filing the appeal.

Therefore, LA. No. 1012/2000 is allowed and the delay in filing the appeal is hereby condoned.

Learned Counsel for the parties are heard on admission.

This is insurer''s appeal against the award dated 17-9-1999 passed by the Motor Accidents Claims Tribunal, Jashpurnagar (for short "the Tribunal") in Motor Accident Claim Case No. 13/97.

As against the compensation of Rs. 12,30,000/- claimed by the claimant-Nathaniyal for the death of his son Kuldeep Minj in the motor accident on 11-12-1997, the Tribunal awarded compensation of Rs. 4,27,500/- to the claimant.

In this appeal the appellant-Insurance Company is mainly challenging the quantum of compensation awarded by the Tribunal.

Shri Ali Asgar, learned Counsel for the appellant fairly and frankly conceded that the appellant-Insurance Company did not file any application before the Tribunal for grant of permission u/s 170 of the Motor Vehicles Act (for short "the Act") to contest the claim on all available defences. Learned Counsel, however, submitted that such an application for grant of permission has been filed by the appellant-Insurance Company alongwith the appeal in the High Court and the same has been registered as I. A. No. 153/2001.

In the absence of permission u/s 170 of the Act granted by the Tribunal to the appellant-Insurance Company to contest the claim on all available defences, the appellant-Insurance Company cannot be permitted to challenge the quantum of compensation or the finding about the negligence in this appeal in view of the dictum of the Apex Court in the case of National Insurance Co. Ltd. v. Nicolletta Rohtagi and Ors. reported in 2003(3) TAC 293 (SC), wherein it was categorically held in Paras 31 and 32 as under:

31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, Insurance Company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the Insurance Company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in Sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

For the reasons, our answer to the question is that even if no appeal is preferred u/s 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.

In view of the above quoted dictum of the Apex Court in the case of National Insurance Co. Ltd. (supra), the appeal filed by the appellant-Insurance Company is liable to be dismissed.

The filing of an application by the appellant- Insurance Company u/s 170 of the

Act in the High Court is of no help to the appellant-Insurance Company as the permission u/s 170 of the Act has to be sought in the proceedings pending before the Tribunal and not in the appeal against the award.

The appeal, therefore, fails and is hereby dismissed summarily.