(2008) 10 CHH CK 0005

In the Chhattisgarh High Court

Oriental Insurance Co. Ltd. APPELLANT

Vs

Raju Kesharwani alias Durgesh and Others RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 166, 170, 173

Citation : AIR 2009 Chh 13

Hon'ble Judges : Rajeev Gupta, C.J;Sunil Kumar Sinha, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Shri Sudhir Agrawal, learned Counsel for the appellant.

2. By allowing I.A. No. 2/2008, the documents filed along with this application are taken on record.

3. Shri Sudhir Agrawal, learned Counsel for the appellant is heard on admission.

4. This is insurer''s appeal against the award dated 9-5-2008, passed by the 12th Additional Motor Accident Claims Tribunal, Raipur (for short "the Tribunal") in Claim Case No. 151/2007.

5. As against the compensation of Rs. 46,90,000/- claimed by respondent No. 1 Raju Kesarwani alias Durgesh by filing a claim petition u/s 166 of the Motor Vehicles Act for the injuries sustained by him in the motor accident on 1-3-2007, the Tribunal awarded a total sum of Rs. 7,69,861/- as compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till the date of actual payment.

6. Shri Sudhir Agrawal, learned Counsel for the appellant frankly and fairly conceded that the appellant/insurance Company in this appeal has not taken any ground u/s 149(2) of the Motor Vehicles Act and the sole challenge in this appeal is to be quantum of compensation awarded by the Tribunal. Learned Counsel for the appellant further conceded that the appellant/insurance Company did not

even file an application u/s 170 of the Motor Vehicles Act before the Tribunal for grant of permission to contest the claim on all available defences.

It is also relevant here to mention that the owner and driver of the offending vehicle contested the claim and filed their written statement before the Tribunal.

7. The Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, while considering the permissibility of challenge by the Insurance Company to the quantum of compensation in the absence of permission u/s 170 of the Motor Vehicles Act observed in paras 31 & 32:

31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, an 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 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.

32. For the aforesaid 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.

8. As admittedly the appellant/Insurance Company neither sought nor was granted permission by the Tribunal u/s 170 of the Motor Vehicles Act to contest the claim on all available defences, the appellant/Insurance Company, in view of the above quoted dictum of the Apex Court cannot be permitted to challenge the quantum of compensation awarded by the Tribunal in this appeal.

9. As the appellant/Insurance Company has not taken any other ground for challenging the impugned award, the appeal is liable to be dismissed and is hereby dismissed summarily.

