

(2015) 02 GAU CK 0088
In the Gauhati High Court
Case No : C. Rev. No. 12 (K) of 2011

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Shefali Das and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 149, 149(2), 149(7), 163A

Citation : (2015) 3 GLT 416

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : B. Devnath and Zhevi Swu, for the Appellant; Limawapang, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Arup Kumar Goswami, J—Heard B. Devnath, learned counsel for the petitioner and Mr. Limawapang, learned counsel appearing for respondent No. 1. The respondent No. 1 had filed a claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988, for short, the Act, registered as MAC Case No. 13/07 before the Motor Accident Claims Tribunal, for short MACT Dimapur, Nagaland claiming compensation for the death of her husband Late Sanjib Das in a motor vehicle accident.

2. The petitioner was arrayed as opposite party No. 2 and the owner of the vehicle bearing No. AS-09/A-1341 driven by the deceased Sanjib Das was arrayed as opposite party No. 1.

3. The petitioner had filed an application under Section 170 of the Act on 10.08.2007 praying for allowing the petitioner to exercise the right to contest the claim taking all defence but learned Tribunal did not pass any order either allowing or rejecting permission under Section 170 of the Act. Another application was filed by the petitioner on 31.05.11 praying for permission under Section 170 of the Act to contest the case on merit. It appears that the said

application was disposed of on 14.06.11 after claimant had adduced evidence and the said order is the subject matter of challenge in this petition.

4. The respondent No. 1 had also filed an application praying for amendment of the claim petition to one under Section 163A of the Act. By an order dated 29.04.2010, after hearing the learned counsel for the parties, the learned Tribunal allowed the amendment as prayed for on condition that the interim compensation will have to be reimbursed in case the claim petition is dismissed.

5. Mr. B. Devnath, learned counsel for the petitioner has submitted that in the written statement, the petitioner had stated that Sanjib Das did not die as a result of any vehicular accident and it was a case of murder simpliciter. He has further submitted that in view of the law laid down by the Apex Court in the case of United India Insurance Company Ltd. Vs. Shila Datta and Others, (2011) ACJ 2729 : AIR 2012 SC 86 : (2012) 2 JCC 849 : (2011) 12 JT 233 : (2011) 164 PLR 806 : (2012) 1 RCR(Civil) 582 : (2011) 2 SCALE 5 , the petitioner having been made party-respondent by the claimant, it cannot be restricted to urge only the grounds as contemplated under Section 149(2) of the Act and in that sense, the application submitted by the petitioner before the learned Tribunal was misconceived. It is submitted that the said application was filed as at the relevant point of time, the law was not very clear with regard to the rights of the insurance company to contest the proceeding on merit. He has submitted that the insurance company was deprived of the opportunity of examining its witnesses though as a party-respondent it is entitled to examine witnesses. He has submitted that after the closure of the evidence of the claimant, the case was posted for argument. The learned counsel submits that even otherwise, the Tribunal committed manifest error of law in rejecting the said application under Section 170 of the Act on the ground that the owner of the vehicle had contested the case by filing written statement by ignoring the fact that the owner of the vehicle had declined to cross-examine the claimant and had also not adduced any evidence and as such it could not have been concluded by the learned Tribunal that the case was contested by the owner. Mr. Devnath also pointed out that in paragraph 3 of the present application, a wrong statement has been made to the effect that owner of the vehicle No. NL-07/T-0097 was impleaded as opposite party No. 3 and in fact, there was no opposite party No. 3 in the claim petition.

6. Mr. Limawapang, learned counsel for the claimant/respondent No. 1 submits that the learned Tribunal passed the impugned order on an infructuous petition inasmuch as the application under Section 170 was filed at a time when the claim petition was registered under Section 166 read with Section 140 of the Act. Subsequently, after amendment when the claim petition was amended to one under Section 163A, no further application was filed under Section 170 of the Act as the application dated 31.05.2011 was merely a continuation of the earlier application dated 10.08.2007. The learned counsel also submits that the petitioner having filed the application under Section 170 of the Act, cannot now

plead that the said application was filed on a misconceived notion. He has further submitted that as the owner of the vehicle had contested the case by filing written statement, the learned Tribunal was justified in rejecting the application under Section 170 of the Act.

7. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

8. The entire scheme and structure of Chapter XI (Insurance of motor vehicles against third party risks) and Chapter XII (Claims Tribunals) provide that a claimant is required to file a claim petition against the owner and driver of the vehicle in question. There is no requirement under the provisions of the Act to implead the insurer as a party-respondent. At the same time, there is also no bar for the claimant to implead the insurer as a party-respondent.

9. At this stage, it will be appropriate to refer to Section 149(2) and Section 149(7), which read as follows:-

"149(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the beginning of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in

some material particular".

"149(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be."

10. From the aforesaid, it is clear that the Tribunal has to issue a statutory notice under Section 149(2) to the insurer so that it can be made liable to pay the compensation awarded by the Tribunal and also resist the claim on any of the grounds mentioned in clauses (a) and (b) of sub-section 2 of Section 149. A perusal of sub-sections 1, 2 and 7 of Section 149 of the Act would leave no manner of doubt that the said provisions refer to the insurer being only a noticee and not a party.

11. Before I proceed further, it will also be relevant to take note of Section 170 of the Act, which reads as follows:-

"170. Impleading insurer in certain cases-Where in the course of any 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."

12. Perusal of Section 170 of the Act also shows that it provides for and contemplates insurer being merely a noticee for the purposes mentioned in the Act and not being a party-respondent. The status of the insurance company in the proceeding determines its rights. As a noticee under Section 149(2) of the Act, its rights are different as compared to when it is impleaded as a party-respondent.

13. In National Insurance Co. Ltd., Chandigarh Vs. Nicolledda Rohtagi and Others, (2002) ACJ 1950 : AIR 2002 SC 3350 : (2003) 95 CLT 157 : (2002) 112 CompCas 257 : (2002) 7 JT 251 : (2002) 3 PLR 621 : (2002) 6 SCALE 569 : (2002) 7 SCC 456 : (2002) 2 SCR 456 Supp , the Apex Court had laid down that the insurer, if aggrieved by an award, may file an appeal only on the grounds mentioned in Section 149(2) of the Act or where the condition precedent specified in Section 170 of the Act is satisfied. In other words, unless an order is

passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom the claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible for the insurer to contest the claim on the grounds which are available to the insurer or to a person against whom a claim has been made.

14. But if the insurance company is a party-respondent, because of the fact that it is made a party to the proceeding by the claimant, there cannot be any reason why it should be restricted to the grounds which are only available under Section 149(2) of the Act.

15. Rights of party in a proceeding to put forward the case cannot be curtailed and therefore, if the insurance company is a party-respondent, it can raise not only those grounds which are available under Section 149(2) of the Act but also all other grounds that are available to a person against whom a claim is made.

16. There is no dispute at the bar that in the instant case, the petitioner insurance company was made a party-respondent by the claimant and therefore, it will be entitled to urge all contentions and grounds as such respondent. The Apex Court has made the aforesaid position explicitly clear in *United India Insurance Co. Ltd.* (supra).

17. Section 170 of the Act does not contemplate an insurer making an application for impleading itself as a party. Section 170 of the Act, visualizes that in the event of satisfaction derived by the Tribunal during the course of inquiry that there is collusion between the person making a claim and the person against whom the claim is made, or the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct the insurer, who may be liable in respect of such claim, to be impleaded as party to the proceeding and the insurer, so impleaded, shall thereupon have all the rights to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

18. When the insurance company was already a party-respondent in the proceeding, there could have been no occasion for it to have filed an application under Section 170 of the Act to make it a party-respondent to enable it to contest the case on merits. By virtue of being a party-respondent, it automatically is entitled to contest the case by raising all grounds and is not confined and restricted to the grounds available under Section 149(2) of the Act.

19. Thus, the application submitted by the petitioner under Section 170 of the Act, in the facts and circumstances of the case, is misconceived by Mr. Devnath. In that view of the matter, the argument of Mr. Limawapang that the impugned order was passed on an infructuous petition, requires no further consideration. The learned Tribunal, on its own, should have granted opportunity to the insurance company to adduce evidence.

20. Be that as it may, the order dated 14.06.2011 passed by the learned

Member, MACT, Dimapur rejecting the said application, holding, in effect, that conditions enumerated under Section 170 of the Act was not satisfied is also, ex-facie, not sustainable.

21. Mere filing of a written statement by the insured does not mean that the insured had contested the claim. Contest means that a party has taken all such steps as are required to seek to effectively negate the claim made by the other party. There is no dispute that the vehicle owner (insurer) had declined cross-examination of the claimant, the only witness examined on behalf of the claimant. It is also not in dispute that the owner of the vehicle had also not sought for examination of witnesses on his behalf and the case was posted for argument after evidence of the claimant was closed. If that be so, it cannot be said that the insured was taking effective steps and was contesting the claim petition.

22. In view of the above discussion, the impugned order dated 14.06.2011 is set aside and quashed.

23. At this stage, Mr. Limawapang, learned counsel for respondent No. 1 submits that though the evidence of the claimant was closed, liberty may be granted to examine further witnesses on behalf of the claimant for the ends of justice. Mr. B. Devnath, learned counsel for the petitioner does not oppose the said prayer of Mr. Limawapang.

24. The claimant will be at liberty to examine further witnesses on her behalf and the parties including the insurance company will be given due opportunity to cross-examine such witnesses. The learned Tribunal will also allow the Insurance Company to adduce evidence on its behalf and thereafter, will proceed to dispose of the claim petition in accordance with law.

25. The parties to the proceeding before this Court will appear before the learned MACT, Dimapur on 04.03.2015. However, as the owner of the vehicle has not entered appearance in this proceeding before this Court, the learned Tribunal will notify the learned counsel appearing for the owner in the pending proceeding by fixing another date for his appearance. With the above observations and directions, this petition is disposed of.