
(2008) 08 OHC CK 0061
In the Orissa High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Anjan Pentho Behera and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 170, 173, 96

Citation : AIR 2009 Ori 10 : (2008) CLT 787 Supp : (2008) 2 OLR 1065 Supp

Hon'ble Judges : B.S. Chauhan, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—Both the appeals against the High Court Order have been filed against the judgment and order of the learned single Judge dated 12-9-2000, by which the learned single Judge has dismissed the two appeals which were filed challenging the award of the Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal") in view of the fact that the appellant-insurance company has not fulfilled the requirement as provided u/s 170 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"). The questions arise as to whether the appeal on behalf of the insurer, who has not taken permission as required u/s 170 of the Act, u/s 173 is maintainable.

2. The facts and circumstances giving rise to these appeals are that the accident occurred on 4-5-1997 at Korapalli junction as a consequence of which one Surendra Petho Behera had died because of injuries caused by the offending vehicle. His widow, parents and sister filed two applications which were registered as MAC Nos. 545 and 544 of 1997. The registered owner of the vehicle filed written statement before the Tribunal denying the allegations made in the claim petition and as he did not participate in the proceeding further he was proceeded ex parte. The appellant-insurance company participated in the proceeding by filing written statement, denying the allegations made by the claimants. As both the claim petitions had arisen out of the same accident, they were taken up together and decided by an award dated 21-9-1998 awarding a

compensation of Rs. 3,24,000/- and Rs. 97,500/- in both the cases. Being aggrieved, the insurance company filed two appeals challenging the quantum of award passed in those cases. The learned single Judge dismissed the appeals as not maintainable on the ground that the appellant did not make any application for permission as required u/s 170 of the Act and therefore, the appeals were not maintainable. Hence, these appeals.

3. Mr. A. K. Mohanty, learned Counsel for the appellant has submitted that in case the insurance company had been permitted to file the written statement and participate in the proceeding before the Tribunal it is to be held that the appellant had been impliedly grant the permission to contest the cases and therefore, the judgment and order of the learned single Judge requires to be reversed.

4. On the other hand, Mr. B. Sahoo, learned Counsel for the claimants-respondents has contended that the insurance company-appellant never filed application for permission and therefore, the question of granting permission in writing and possibility of recording reasons could not arise. It is the mandate of law that written application for permission is to be made and reasons are to be recorded by the Tribunal, while granting such a permission. Absence of such application does not recognize implied permission. Recording of reasons in writing is an essential condition for grant of permission, therefore implied permission cannot be presumed. Therefore, the appeals lack merit and thus, are liable to be dismissed.

5. We have considered the rival submission made by learned Counsel for the parties and have perused the record. Section 170 of the Act, reads as under:

170. Impleading insurer in certain cases. Where in the course of any inquiry, the claims Tribunal is satisfied that:

(a) there is conclusion 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 reason 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 allowing any of the grounds that are available to the person against whom the claim has been made.

6. A reading of the aforesaid provision makes it clear that the Tribunal is competent to implead the insurer only in certain cases and not in all cases. The cases are limited where the Tribunal comes to the conclusion that there is collusion between the claimants and the insured/registered owner of the vehicle, or person against whom the claim is made has failed to contest the claim. However, such permission can be granted by a written order and it should be

supported by reasons recorded in writing.

7. In the instant case, no application for impleadment had ever been filed by the insurer on any ground whatsoever, in spite of the fact that the registered owner did not contest the case and/was proceeded ex parte. There is no order in writing by the Tribunal permitting the appellant to contest the claims. Nor any reason had been recorded whatsoever. Therefore, the question arises as to whether in such a fact-situation there can be presumption that the Tribunal permitted the appellant-insurance company to participate in the proceedings by impliedly impleading the appellant as it had participated in the proceedings on all possible grounds including the question of compensation.

8. There can be no dispute to the settled legal proposition that the Court cannot grant any relief to any party in litigation or any other persons unless such relief is asked for by the said party. It is not within the competence of the Court or Tribunal to grant such a relief *sou motu*. Vide *Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar*, ; *Life Insurance Corporation of India and Others Vs. Jyotish Chandra Biswas*, ; *Rhone-Poulenc (India) Ltd. Vs. State of U.P. and Others*, ; and *National Board of Examinations Vs. G. Anand Ramamurthy and Others*, . Therefore, in absence of any application for grant of permission, the question of implied grant of permission does not arise.

9. In *Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another*, , the Supreme Court considered the same issue and came to the conclusion that the insurance company can be permitted to contest on merits only if the conditions precedent mentioned in the Section 170 of the Act are found to be satisfied and for that purpose the insurance company has to obtain order in writing from the Tribunal and the said order should be a reasoned order. The Court further held as under:

Unless that procedure is followed the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence.

In the said case as permission has not been granted to the insurance company as required u/s 170 of the Act, the appeal was held to be not maintainable by the Apex Court.

10. Similarly in *Smt. Rita Devi v. New India Assurance Co. Ltd.* AIR 2000 SC 1930, the Apex Court while considering the same issue reconsidered its earlier judgment in *Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another*, approved and followed it observing that "insurance company had not obtained leave from the Tribunal before filing the appeal". Thus, the appeal filed by the insurance company before the High Court was not maintainable in law.

11. In *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, , the Supreme Court overruled its earlier judgment in *United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others*, observing that the object of enacting the provision had been to relieve the distress and miseries of victims

of accidents and reduce the profitability of the insurer in regard to occupational hazard undertaken by them by way of business activities and not to promote business interests of insurance companies even though they may be nationalised companies and as in the said case the Court failed to take note of the points available to the insurance company u/s 149(2) of the Act, the said decision could not be said to have laid down the correct law. The Court further held that the insurance company does not have a right to appeal challenging the award on merit. However, in a situation where there is a collusion or where the person against whom the claim petition is filed is not contesting the claim and further condition precedent that in such cases the insurer must seek permission of the Tribunal to contest the claim on the ground available to the insured or to the person against whom the claim has been made. The Supreme Court held as under:

...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....But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence...

12. Similar view has been reiterated by the Supreme Court in *Narendra Kumar and Another Vs. Yarenissa and Others*, and it has been held as under:

...That is the reason why the Courts have consistently taken the view that the insurance company has no right to prefer an appeal u/s 110-D of the Act unless it has been impleaded and allowed to defend on one or more of the grounds set out in Sub-section (2) of Section 96 or in the situation envisaged by Sub-section (2-A) of Section 110-C of the Act. If then the insurer and the owner of the offending vehicle file a joint appeal and if the Court comes to the conclusion that the insurer had no right to prefer an appeal u/s 110-D of the Act because none of the defences mentioned in Sub-section (2) of Section 96 were available to him nor had a situation of the type envisaged by Sub-section (2-A) of Section 110-C arisen, it cannot be permitted to file an appeal whether on its own or in association with one or more of the tort-feasors against whom the award is made which the insurer is liable to answer as if a judgment-debtor.

13. In *Jagdish Prasad Pandey v. Darshan Singh and another*, (2002) 9 SCC 527; *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, and *R. Mannakatti v. M. Subramanian* (2005) 11 SCC 389; the Apex Court considered the issue and held that it is not permissible for the Insurance Company to contest the claim unless the permission is granted by the Tribunal u/s 170 of the Act and permission can be granted only on either of the conditions incorporated therein i.e., the insured is in collusion with the claimants or the insured does not contest the claim.

14. In *National Insurance Co. Ltd. Vs. Mastan and Another*, ; *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, and *Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others*, ; the Apex Court held that in a proceeding where the right

of the insurer to raise the defence is limited in terms of Section 149(2) of the Act, an appeal preferred by it against an award of the Tribunal must be confined or limited to that extent. It is permissible for the insurer to raise all other grounds provided it has been granted permission by the Tribunal to contest the claim on any of the grounds as envisaged u/s 170 of the Act.

15. In *Chinnama George v. N.K. Raju* AIR 2000 SC 1565, the Supreme Court held that if none of the conditions as contained in Section 149(2) exists for the insurer to avoid the liability, the insurer cannot be held to be a "person aggrieved" by the award and he is bound to satisfy the award and in such a case, the insurer will be barred from filing an appeal against the award of the Tribunal.

16. In *Asha and Others Vs. United India Insurance Co. Ltd. and Another*, , the Supreme Court held that in case a joint appeal has been filed before the High Court against an award of the Tribunal by the insurer and the insured, the appeal would be maintainable only if the name of the insurer is deleted from the array of parties. While deciding the said case, reliance had been placed by the Court upon its earlier judgment in *Narendra Kumar v. Yarenissa* (supra) wherein it had been held that if a joint appeal is filed by the insurer and insured, the appeal as such should not be dismissed, but the tort-feasor could proceed with the appeal after deleting the name of the insurer.

17. The provisions of Section 170 of the Act provide that when permission is granted to contest the claim to the insurer reasons have to be recorded. Therefore, any order passed by the Tribunal granting permission to contest would not be valid unless reasons are found having been recorded in writing. Even otherwise, when the Statute does not require to record the reasons the authority even exercising its administrative power is bound to pass a speaking and reasoned order as from the reasons it may be examined as to whether the authority has acted fairly and not arbitrarily. More so, recording reasons is supposed to be the principles of natural justice and requirement of the application of rule of law. It is an indispensable part of sound system of judicial review. More so, recording the reason is essential as the reasons are the links between the material, the foundation for these erections and the actual conclusion. Reasons would also administer how the mind of the marker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusion reached. Therefore, it should be evident from the reasons as what was the material on which the authority has based its conclusion. (Vide *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, ; *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, ; *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, ; *State of West Bengal Vs. Atul Krishna Shaw and Another*, ; *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, ; *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, ; *Krishna Swami Vs. Union of India and another*, ; *LIC of India and Another Vs. Consumer Education and Research center and Others*, ; *Secretary, Ministry of Chemicals and*

Fertilizers Government of India Vs. Cipla Ltd. and Others, , and Union of India (UOI) and Another Vs. International Trading Co. and Another, .

18. In fiscal statutes the Legislature in its wisdom has conferred competence upon the assessing authority to reopen the assessment provided he has reasons to believe that there is certain income or sale or purchase which can be subjected to Income Tax sales or purchase tax, the authority may reopen the same. However, in doing so the authority must have some material in his possession on the basis of which such opinion has been formed and he must record the reasons for forming such an opinion. In case the material on the basis of which the opinion is formed is found missing or reasons have not been recorded, the Apex Court has consistently held that order of reopening of assessment will vitiate as not being permissible in law. (Vide M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, ; Union of India v. Rai Singh Deb Singh AIR 1974 SC 748; Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, ; Sales Tax Officer, Ganjam Vs. Uttareswari Rice Mills, and S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, .)

19. While deciding an issue, the Court is bound to give reasons for conclusion. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. (Vide State of Orissa Vs. Dhaniram Luhar, ; and State of Rajasthan Vs. Sohan Lal and Others, .

20. Thus, it is evident from the above discussion that recording of reasons is a requirement of principles of natural justice and every administrative or judicial order is supposed to be supported by the reasons recorded in writing. This remains the settled legal position, where statute does not expressly require the forum/authority/Court/Tribunal to record reasons, in writing. In a case like the instant, where recording reasons is an explicit statutory requirement, even if order of grant of permission is there, it cannot be termed to be a valid order, if not supported by reasons in writing.

21. In view of the above, we are of the considered opinion that in the facts and circumstances of the case the question of presumption that there had been any implied permission to contest the case does not arise. Judgment and order of the learned single Judge does not warrant any interference.

22. The appeals lack merit and are accordingly dismissed.

B.N. Mahapatra, J.

23. I agree.