(1998) 11 J&K CK 0055

In the Jammu And Kashmir High Court

Case No : C.I.M.A. No. 1/1998

Oriental Insurance Company — APPELLANT

Vs

Krishan Chand Sharma — RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:
Motor Vehicles Act, 1988 — Section 170

Citation : (1999) SriLJ 394 : (1999) 2 SriLJ 394

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Sanjay Gupta, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, Judge

l. This appeal at the instance of Insurance Company is directed against the award passed by motor Accident Claims Tribunal, Jammu in File No:

480/claims dated 24th November, 1997. By means of impugned award a total sum of Rs. 2,44,000/ together with interest @ 12% on the amount,

except on Rs. 60.000/ (awarded on account of future loss of income) has been passed in favour of respondent no. 1 and against the appellant. In

order to properly appreciate the contention urged on behalf of the appellant, brief facts giving rise to this appeal need to be noticed.

2.On 17th September, 1996 petitioner was going on his Scooter bearing registration No: JKD 2C119 from Trikuta Nagar toward Jammu City.

When he reached near Panama Chowk, a truck bearing registration No: JKQ7453 came from behind being driven in a rash and negligent manner

by Sewa Singh respondent No.1 hit the scooter of petitioner resulting in accident causing injuries to respondent No. 1 in his left leg. After accident petitioner was taken to Gandhi Nagar Hospital and thereafter was referred to Government Medical College, Jammu. This claim of respondent No.

1 came to be contested by the appellant as well as by respondents 2 and 3, driver and owner respectively of offending truck in question. It

appears that Tribunal below held that the vehicle in question was being driven in rash and negligent manner by respondent No.2 which resulted in

causing accident in question. Even otherwise when a reference is made to the oral as well as documentary evidence on record including that of

Doctor P.K.Bhan, it is clear that respondent No. 1 sustained fracture on upper part of his left femur with a wound. This doctor had referred

respondent No.1 to Government Medical College, Jammu, where also he was attended to by the witness and finally the witness advised

respondent No. 1 to get treatment at Amritsar. It appears that respondents 1 and 2 i.e. diver and owner did not lead any evidence and rightly so in

the case of crypts and telegraphic objections filed by them to the claim petition.

3.In the aforesaid background appeal has been filed by the Insurance Company. Sh Gupta, learned counsel appealing for the appellant need an

attempt to persuade the court to permit his client to contest the case on available grounds keeping in view the noncontest of the case by the

respondents 2 and 3 after having filed their objections to the claim petition and their after having not appeared in the witness box. While buttressing

is this submission further, Sh Gupta pointed out with reference to file of Tribunal below that since appellant was permitted to crossexamine the

witnesses of claimant, therefore, necessary permission is deemed to have been granted within the meaning of Section of 170 of Motor Vehicles

Act.

Argument primafacie seems to be impressive as well as attractive. Here a reference to Section 170 of Motor Vehicles Act (supra) can be of useful

assistance, which is reproduced hereinbelow:

170. Impleading insurer in certain cases. Where in the case course of any inquiry, the claimant 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 subsection (2) of Sectionl49, 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.

4.When the submission of Mr.Gupta is tested on the touch stone of Section 170 (supra), it has no force. This is a special provision enabling the

claims Tribunal during the course of inquiry before it on either of the conditions mentioned in subclause (a) and (b) thereof being fulfilled and for

reasons to be recorded in writing permitting the insurer (appellant in the present case) to contest the claim on all or any of the grounds as are

available to the person against whom claim had been made.

5.A perusal of aforesaid provision clearly presupposes that before an insurer is permitted to contest the claim on all available grounds, grand of

necessary permission is a quidproquo. Admittedly no such permission, muchless on recorded reasons had been either obtained or granted by the

Tribunal below in favour of the appellant.

6.Defences of Insurance Company are limited under Section 149 of the Motor Vehicles Act 1988, which position learned counsel appearing for

appellant does not dispute.

7. On the basis of fact enumerated hereinabove, which are otherwise clear from the record of the case, the matter need not detain us any further on

the right of appellant to maintain the present appeal on the merits as is evident from the grounds of appeal as also in the face of recent decision of

Supreme Court reported in JT 1988 (4) SC 300, ""Shankarayya and another Vs. United India Insurance Co. Ltd. And another.

8.No other point has been urged.

9. As a result of aforesaid discussion there is no merit in this appeal which is accordingly dismissed. The amount which is lying in the deposit will

remain invested for a total period of twenty five months from the date of FDR in question, and if it matures in between, registry will get it renewed

on the basis of this order. Further, liberty is reserved to the appellant to approach the court for release of amount if he has to go for operation

meanwhile. No casts.