

(2008) 12 PAT CK 0024
In the Patna High Court
Case No : C.R. No. 1133 of 2006

Oriental Insurance Company Limited

APPELLANT

Vs

Sumitra Devi and Others

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2), 170, 170(2), 170(a)

Citation : (2009) 2 PLJR 619

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard Mr. Ashok Priyadarshi, counsel for the petitioner and Mr. Shailesh Kumar Singh, counsel for the opposite parties Nos. 1 to 9 as also Mr. Kamendra Prasad Singh, counsel for the opposite parties Nos. 10 & 11. The grievance of the petitioner-Insurance Company as with regard to the impugned order dated 28.4.2006 seems to be wholly misconceived. All that has been done by the impugned order is that the application filed by the petitioner-company seeking leave of the court to contest the compensation case has been held to be premature. The Court below has given sound reasons for it and has recorded that since the evidence of the applicant had not begun nor the opposite parties Nos. 10 & 11 being the owner and driver of the vehicle, had taken any stand which would show that they are in collusion of the claimants, opposite parties Nos. 1 to 9, the stage for allowing permission to contest the compensation case for the Insurance Company had not yet arrived.

2. Mr. Priyadarshi however, in order to support his case would submit that since the Court below, the Motor Vehicles Claim Tribunal has rejected the application seeking leave u/s 170 of the Motor Vehicles Act, it had no option but to file this civil revision application because the case of the Insurance Company of contesting the compensation case was lost for once and all. Counsel for the opposite parties would however point out that the very expression used by the

Court that the application filed by the Insurance Company was premature was itself indicative of the fact that the Insurance Company always had the liberty to seek leave at a proper stage once it was in a position to satisfy that either of the two requirements u/s 170 was fulfilled.

3. This Court would first of all find that impleading Insurance Company (insurer) in all the claim cases arising out of accident under Vehicle Act is not a condition precedent. The intention of legislature for allowing the impleadment of Insurance Company is confined only in two specified situations namely collusion of claimant with the person against whom claim is lodged or absence of contest by the person against whom claim is lodged. This would be clear from the provision of Section 170(a) and (b) of the Motor Vehicles Act itself 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."

(underlining by me for emphasis)

4. The next question would be that when would therefore, a necessity arise for impleadment of the Insurance Company before the Motor Vehicle Tribunal? The obvious answer again is to be found in Section 170 of the Act itself which lays that only when the Claim Tribunal is satisfied in course of its enquiry that "there is a collusion between the persons making the claim and the person against whom claim is made, or (b) the person against whom the claim is made has failed to contest the claim", the Insurance Company may be allowed to be impleaded as a party.

5. In the present case, from the records, it would appear that not only the owner and the vehicle in question had appeared before the Tribunal but had also filed their written statement way back on 23.12.2005 and therefore, at least the requirement of Section 170(b) of the Act was not fulfilled.

6. That apart, the written statement filed by the owner and driver placed before the Tribunal on 23.12.2005 would also go to show that there was absolutely no collusion between the person making the claim i.e. the opposite parties Nos. 1 to 9 and the person against whom the claim was made i.e. opposite parties Nos. 10 & 11. In such a situation, it cannot be remotely suggested that the Court below

has committed a jurisdictional error while refusing the permission for impleadment of Insurance Company as a party in terms of Section 170 of the Act.

7. Mr. Priyadarshi however, has expanded his submission by placing reliance on a judgment of the Apex Court in the case of National Insurance Co. Ltd. Vs. Mastan and Another, and has drawn the attention of this Court towards paragraph No. 17 of the judgment, which reads as follows:-

"17. It is beyond any doubt or dispute that in a proceeding where the right of the insurer to raise a defence is limited in terms of sub-section (2) of Section 149, an appeal preferred by it against an award of the Motor Accidents Claims Tribunal must be confined or limited to that extent. But once a leave has been granted to the insurer to contest the claim on any ground as envisaged in Section 170 of the 1988 Act, an appeal shall also be maintainable as a matter of right, wherein the High Court can go into all contentions.

The Full Bench of the Karnataka High Court, in our opinion, committed a serious error in relying upon the judgments of this Court, in terms whereof the right of appeal of the Insurance Company has been held to be limited, inasmuch in those decisions this Court was considering a situation where sub-section (2) of Section 149 was attracted."

8. In the opinion of this Court, the reliance placed by the learned counsel on the aforementioned judgment of National Insurance Co. Ltd. (supra) is also wholly misplaced.

9. From the aforesaid extracted text of the judgment of the Apex Court, it would be clear that the question involved in that case was not with regard to according permission for impleadment u/s 170 of the Act rather the issue involved therein was that once an appeal is filed against the award of the Tribunal, the Insurance Company will be definitely entitled to assail each and every issue decided by the Tribunal because it was given permission to contest the claim case. In the opinion of this Court, therefore the judgment of National Insurance Co. Ltd. (supra) would hardly be an answer to the issue involved in this case.

10. Mr. Priyadarshi next contends that this issue has been already decided by this Court in an unreported judgment in the case of National Insurance Company vs. Riva Bharthuar & Ors. disposed of on 10th of March, 2006. The said judgment is Annexure-3 to this civil revision application and from the same, first of all it does not appear as to whether the Tribunal in that case had held that the prayer made by the Insurance Company was premature as has been done in the present case. As a matter of fact, this Court in the aforesaid case had proceeded on an admitted position that the Insurance Company had already been made a party at a point of time its application seeking permission to defend the case, had been dismissed. This Court in the case of Riva Bharthuar (supra) has nowhere considered the provision of Section 170 of the Act and the two specific conditions on which alone impleadment can be allowed. Thus, the aforesaid judgment of Riva Bharthuar (supra) cannot be a binding precedent for this Court.

11. That would leave the Court to find out as to whether it is a deliberate game plan of the Insurance Company to delay the disposal of the claim cases pending before the Tribunal by filing frivolous application initially before the Tribunal and thereafter carrying appeal and/or revision before this Court. In the present case, the application filed by the petitioner before the Tribunal reads as follows:-

"In,

The Court of District Judge, Aurangabad.

M.V. 13/05

Mosmat Sumitra Devi.... Applicants,

vs.

Uppendra Singh & Others.... OP.

The humble petition u/s 170 M.V. Act on behalf of O.P. No. 3, the Oriental Insurance Co. Ltd.

Most respectfully sheweth:-

1. That the owner of the vehicle is not contesting the case and is in collusion of the applicant to defeat the interest of this petitioner.

2. That the petitioner is ready to contest the case on all points u/s 149(2) of the M.V. Act for the right conclusion of this case.

It is therefore prayed that be pleased to allow the petitioner to contest the case on all points u/s 149(2) of the M.V. Act to meet the ends of justice.

And for this the petitioner shall every pray."

12. From the prayer made, it would be clear that leave was sought to contest the case on all the points u/s 149(2) of the Act by claiming that the owner of the vehicle is not contesting the case and is in collusion of the applicant to defeat the interest of the petitioner-Insurance Company. On what basis such reckless statement was made by the Insurance Company is not clear because as noted above, not only the owner and the driver of the vehicle in question had appeared but they had also been contesting the case in true earnestness by raising objection to the claim of the opposite parties Nos. 1 & 2, claimants before the Tribunal. The scope of Section 170 does not envisage according permission to the Insurance Company in a mechanical and routine manner. The courts/tribunal are required to be wary in allowing such application to become a usual contesting civil litigation. The scheme of the Act is very clear that initially the claimant will bring a case against a person on account of whose action or conduct, the death or injury has taken place and therefore, the enquiry is confined between the persons making the claim and the person against whom claim is made.

13. It is not the case of the Insurance Company in this case that the claim was

made by the claimants against the Insurance Company straightway. In that view of the matter, the introduction of Insurance Company by way of impleadment in a compensation case had to be necessarily made only if the Claim Tribunal was satisfied of the two conditions as mentioned u/s 170(2) of the Act. That having been not fulfilled, if the Court below has held that such application of the petitioner-Insurance Company was premature, there would be no reason for this Court to hold any jurisdictional error in the said order.

14. As noted above, on account of pendency of this civil revision application which was filed against an order dated 28.4.2006, the compensation case has not progressed and the family of the opposite parties who have lost their bread-earner were only made victim of the grand design of the Insurance Company to deprive them from getting their compensation case decided at an early date.

15. That being so, while this Court must dismiss the application filed by the petitioner-Insurance Company, it also must impose an exemplary cost of Rs. 5,0007-(five thousand) to be deposited by the Insurance Company before the Tribunal within a period of one month from the date of receipt/production of a copy of this order. It is, however made clear that if at any stage of the proceedings, the Insurance Company satisfies the twin test of Section 170 of the Act, it would definitely have a right to defend u/s 149(2) of the Act. With the aforementioned observations and direction, this civil revision application is hereby dismissed.