
(2008) 02 AHC CK 0149
In the Allahabad High Court

Oriental Insurance Company Ltd.

APPELLANT

Vs

Puspa Devi and Others

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Motor Vehicles Act, 1988 — Section 140, 149, 166, 168, 170

Citation : (2009) ACJ 747

Hon'ble Judges : Shishir Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Amitava Lala, J.—This appeal is made by the insurance company against an award of the Motor Accident Claims Tribunal dated 14th August, 2007 u/s 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter called as the "Act") on account of wrong fixation of quantum of compensation and negligence of the deceased. An application was made by the insurance company u/s 170 of the Act to contest the claim on the ground of collusion between owner of the vehicle and the claimant of the compensation which was rejected by the tribunal on or about 2nd July, 2007. A limited observation has been made by the tribunal which implies that since owner has already filed his objection against the claim of the claimant, the application of the insurance company can not be entertained. Therefore, on the ratio of the judgment reported in United India Insurance Co. Ltd. Vs. Jyotsnaben Sudhirbhai Patel and Others, followed by this Division Bench in F.A.F.O. No. 2087 of 2007 (United India Insurance Co. Ltd. v. Krishna Kumar and Ors.), delivered on 1st August, 2007 and circulated to all District Judges of the State of Uttar Pradesh, we can construe that minimum reason as above will suffice the cause of disposal with reasons to meet the technicality.

2. The appellant/insurance company slept with the order of the tribunal without taking any step and preferred this appeal when the tribunal finally passed the award on 14th August, 2007 taking both the plea of rejection of his application

as well as the award ignoring laid down principle by the three Judges" Bench of the Supreme Court reported in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, followed by Division Bench judgment of this Court reported in 2007 (4) ADJ 101 : 2007(4) ALJ 541 (Oriental Insurance Co. Limited v. Smt. Manju and Ors.). In the case of Nicolletta Rohtagi and Ors. (Supra) the Supreme Court has categorically held as follows:

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 filing appeal on grounds specified in Sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be bonafide 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.

3. This Division Bench of the High Court specifically considered the issue that if the application u/s 170 of the Act is rejected whether the insurance company will be remediless or not and ultimately held either the appellant/insurance company will go for rectification of the award if it is victim of circumstances before the tribunal by establishing such fact or it can take out an application under Article 227 of the Constitution before the High Court challenging the order passed in the application u/s 170 of the Act. The present appeal is in the teeth of such judgments. Learned Counsel appearing for the appellant contended that inspite of rejection of the application u/s 170 of the Act, it can prefer appeal from the judgment and award of the tribunal as a matter of course being an aggrieved u/s 173 of the Act. He placed reliance on 2007 (4) T.A.C. 17 (S.C.) (New India Assurance Co. Ltd. v. Smt. Shanti Pathak and Ors.) by saying that the three Judges" Bench of the Supreme Court entertained the appeal on merit inspite of rejection by the High Court on the ground of not having permission to contest

the claim.

4. According to us, the appellant overlooked the following observations of the Supreme Court: (a) The High Court held that no permission had been granted to the insurer to contest its claim, and (b) The High Court did not find any substance in this plea also. Therefore, the Supreme Court entertained the appeal only when found that the High Court had already entered into the merit irrespective of rejection. Such observation can not be said to be a conflicting or later opinion contrary to earlier opinion of the Supreme Court in the case of *Nicolletta Rohtagi and Ors.* (Supra).

5. Moreover, in : (2004)5SCC222 (*Common Cause v. Union of India and Ors.*) it was held by the Supreme Court itself that without laying down the law cannot be read as a ratio of the judgment and certainly not as a precedent. Therefore, when in *Smt. Shanti Pathak and others* (Supra) no reference has been made about the well considered judgment of the Bench of similar strength in *Nicolletta Rohtagi and Ors.* (Supra), the same can not be said to be ratio decidendi. In 2007 AIR SC 2362 (*Oriental Insurance Co. Ltd. v. Meena Variyal and Ors.*) it was held by the Supreme Court that an obiter dictum of this Court (read as Supreme Court) may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court (read as Supreme Court). Here we are bound by the expressed pronouncement. Unless a pronouncement forms a ratio decidendi, it can not bind in rem. Judgment in rem is one which declares, defines or otherwise determines the status of a person or of a thing, that is to say, the jural relation of the person or thing to the word generally following ratio of three Judges" Bench judgment reported in *Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju and Others*, That apart a statute is an edict of the legislature and in construing a statute, it is necessary to see the intention of its maker. If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represents the true intention of the legislature. AIR 2007 SC 1563 (*National Insurance Co. Ltd. v. Laxmi Narain Dhut*) supports the same.

6. Learned Counsel appearing in support of the appellant/insurance company contended before this Court that as per Section 168 of the Act, the Motor Accident Claims Tribunal on receipt of an application for compensation made u/s 166 of the Act after giving notice to the parties(including the insurer) and opportunity of being heard, hold an enquiry etc. Therefore, insurance company is a necessary party to the proceeding before the Motor Accident Claims Tribunal. According to us, Section 168 of the Act speaks for holding an enquiry but not for impleading the party as a matter of course. Section 170 of the Act puts an embargo to that extent by saying that where in the course of enquiry the Motor Accident Claims Tribunal found it satisfied that the insurer should be made party then and then alone it will be impleaded as party respondent. In other words, Section 168 of the Act will be applicable subject to satisfaction of Section 170 of the Act.

7. There is reason for such legislation. Relationship between the insured and insurer is like a relationship between principal and agent. They are sailing in the same boat. Therefore, when the principal is disclosed principal existence of the agent is insignificant unless it is hit by fraud or collusion or any statutory provision like Section 149(2) for having separate identity which is to be tested by the tribunal at first before impleadment but not as a matter of course inspite of the existence of the principal. Therefore, the tribunal will only examine whether there is any conflict between the insurer and insured which likely to be hit by fraud or collusion and statutory requirement and then only the permission is to be granted by the tribunal otherwise there will be a routine permission for the insurance company to contest the proceeding without any cause. The Supreme Court in Nicolletta Rohtagi and Ors. (Supra) discouraged such type of activities on the part of the insurance company and held that if ultimately the insurance company found that there is a fraud or collusion it can also apply for rectification of the award in the tribunal but not to wait and see whether the award is going in its favour or against and then prefer a chance appeal. This discourageable state of affairs is to be understood carefully before making grievance. Moreover, from the composite reading of Jyotsnaben Sudhirbhai Patel (Supra), Nicolletta Rohtagi and Ors. (Supra) and Smt. Manju and Ors. (Supra) we are of the view that an insurance company is entitled to know the reason of allowing or rejection of application u/s 170 of the Act by the Motor Accident Claims Tribunal and can challenge the order of rejection, if any, under Article 227 of the Constitution of India. Therefore, the insurance company can not be said to be remediless.

8. Hence, in totality when we find that the appeal as made by the insurance company only for the purpose of quantum of compensation and negligence in spite of rejection of application u/s 170 of the Act is squarely hit both by the verdict of the Supreme Court as well as the High Court, we are of the view that the appeal can not be admitted and as such the same is dismissed without imposing any cost.

9. Incidentally, the appellant-insurance company prayed that the statutory deposit of Rs. 25,000/- made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust with the amount of compensation to be paid to the claimants, however, such prayer is allowed.