(2008) 09 DEL CK 0309

In the Delhi High Court

Case No : MAC App. No. 106 of 2005

Raj Kumar Tomar APPELLANT

Vs

Sh. Vinesh Kumar Jain and Others RESPONDENT

Date of Decision : 01-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13
Motor Vehicles Act, 1988 — Section 110C(2A), 110D, 146, 147, 147(1)

Citation : (2009) 2 ILR Delhi 108

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : P.K. Seth, for the Appellant; S.N. Parashar and S.P. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of the present appeal, the appellant seeks to challenge the impugned award dated 31.7.2004 passed by the court of Ms. Bimla Kumari, Judge MACT, Shahdara, Delhi. Brief facts of the case relevant for deciding the present appeal are as under:

That the Respondent Nos. 1 to 3 filed a claim petition before the Motor Accident Claims Tribunal u/s 166, Motor Vehicles Act, 1988, against appellant owner and respondent No. 4 insurer of the truck bearing registration No. UP 83 B 9360. On 15/7/2001, on the fateful day the deceased Shri Virender Kumar Jain was traveling in Tata Safari bearing registration No. UP 80 W 0377, when the truck bearing registration No. UP 83 B 9360, driven by its driver at a very high speed and in a rash and negligent manner collided with the Tata Safari, causing grievous injuries to the victim Sh. Virender Kumar Jain due to which he was taken to various hospitals for treatment and he succumbed to his injuries while being treated at Sir Ganga Ram Hospital. Claim petitions were filed by the claimants which led to the passing of an award dated 31.7.2004. Aggrieved with the said award the present appeal has been preferred by the appellant.

2. The offending vehicle i.e. truck bearing registration No. UP-83B-9360 was duly insured with the New India Assurance Co. Ltd, respondent No. 4 herein and the Tribunal while disposing of the two claim petitions i.e. claim petition No. 153/2003 titled as Vinesh Kumar Jain v. Raj Kumar and claim petition No. 154/2003 titled Shafique v. Raj Kumar, had given directions to the said insurance company to deposit the entire amount of award along with interest @ 6% per annum from the date of filing the petition till realization. So far the award passed by the Tribunal in MACT claim petition No. 154/2003 titled Safique v. Raj Kumar is concerned the award amount was paid by the insurance company without any challenge made against the said award. However, with regard to the claim petition No. 153/2003 challenge has been made by the owner/insured of the said offending vehicle, although no challenge to the award has been made by the insurer of the offending vehicle.

3. Mr. P.K. Seth, Counsel appearing for the appellant has mainly raised three contentions so as to assail the findings of the Tribunal. The first contention raised by the counsel is that the Tribunal could not have ignored the fact that the claimants failed to implead the driver, owner and insurer of the TATA Safari bearing registration No. UP-80-W-0377 in which the victim Sh. Virender Kumar Jain was travelling, despite a specific plea to this effect was taken by the appellant insurance company in their written statement attributing rash and negligent driving on the part of the driver of the said TATA Safari. The second contention raised by the counsel for the appellant is that even the claimants failed to implead the driver of the truck bearing No. UP-83B-9360 which vehicle was found to be the offending vehicle. The submission of the counsel for the appellant is that and no tortuous liability could have been fastened upon the owner or the insurer of the offending vehicle without impleadment of the driver of the offending vehicle. Counsel, thus, contended that the petition filed by the claimants in the absence of the driver of the offending vehicle was bad for non-joinder of necessary parties and the Tribunal fell in grave error by ignoring the said vital objection raised by the appellant and had illegally proceeded with the case and ultimately passed the impugned award. The third contention raised by the counsel for the appellant is that the Tribunal has wrongly assessed the monthly income of the deceased at Rs. 20,300/- although the income tax return proved on record as Ex. PW2/C contained the signatures of the deceased who had died prior to filing of the same. Counsel thus contended that the claimants have played fraud in placing reliance on such an income tax return carrying false signatures of the deceased. Counsel for the appellant raised yet another contention that the Tribunal has illegally ignored deposition of R2W1 who was a Chartered Accountant and gave his opinion after examining the income tax returns of the deceased pertaining to the years 1998-99, 1999-2000 and 2000-2001 filed on record. Counsel thus contended that the income of the deceased as stated by the Chartered Accountant should have been given due weightage by the Tribunal instead of believing the said manipulated income tax return filed by the claimants.

4. Contrary to the said submissions made by the counsel for the appellant, Sh. S.P. Jain, Counsel for the respondent took serious objection to the filing of the present appeal by the owner of the offending vehicle although there being no directions against the owner to satisfy the award amount. Thus, counsel for the respondent raised preliminary objection to the very maintainability of the present appeal filed by the owner of the offending vehicle who has no locus standi to prefer the present appeal u/s 173 of the Motor Vehicles Act. Contention of learned Counsel for the appellant is that any person who is ''aggrieved'' by an award can maintain the appeal as per the mandate of Section 173 of the Motor Vehicles Act and the appellant whose vehicle was duly insured with the insurance company cannot be treated as an ''aggrieved'' person and consequently cannot be allowed to fight a proxy battle for the insurance company.

5. Counsel for the appellant has, in support of his arguments, placed reliance on the following judgments:

1. The Oriental Insurance Company Limited Vs. Meena Variyal and Others,

2. Om Wati and Others Vs. Mohd. Din and Others, ; and

3. Narendra Kumar and Another Vs. Yarenissa and Others,

6. Refuting the contention of learned Counsel for the appellant that the claim petition was bad in the absence of driver of the offending vehicle as well as due to non-impleadment of the driver, owner and insurer of the other vehicle i.e., TATA Safari bearing No. UP-80-W-0377, counsel for the respondent submitted that under the Motor Vehicles Act, 1988 (as amended), there has been no such requirement of law to implead the driver of the offending vehicle. Even under the prescribed format for filing a claim petition as laid under the Delhi Motor Vehicles Rules, there is no column concerning the details to be furnished with regard to the driver of the offending vehicle, and therefore, counsel contended that there is no requirement under law to implead the driver of the offending vehicle. Strengthening his argument further, the counsel contended that even the appellant did not raise any such objection on the non-impleadment of driver of the offending vehicle and no steps were taken by the appellant insurance company to summon the driver of the offending vehicle which would clearly show that the contention raised by the appellant in the present appeal is an afterthought. As regards the plea of the appellant with regard to non-impleadment of the driver, owner and insurer of the TATA Safari, counsel for the respondent contended that there was no need to implead them as the driver of the truck was found to be negligent in driving the said truck and even an FIR was registered against the driver of the truck alone. Counsel for the respondent further submitted that the injury case which was disposed of by a common judgment has already attained finality due to there being no challenge being made either by the appellant or by the insurance company, therefore, the same findings cannot be now challenged by the appellant in the present appeal. Counsel also supported the findings of the Tribunal with regard to the

determination of income of the deceased based on oral as well as documentary evidence. Counsel thus contended that no fault can be found with findings arrived at by the Tribunal and the present appeal filed by the owner of the offending vehicle is misconceived and unfounded. Counsel for the respondent has placed reliance on the judgment reported in 1985 ACJ 245 titled United India Fire and General Insurance Co. Ltd v. Gulab Chandra Gupta.

7. I have heard learned Counsel for the parties and have perused the records.

8. It is no more res integra that for maintaining a petition u/s 166 of the Motor Vehicles Act impleadment of the driver of the offending vehicle so as to establish negligence on his part is a mandatory requirement of law. A contract with insurance company is a contract of indemnity and when any vehicle is being driven by a driver employed by the owner/insured meets with an accident, then prime liability under law for payment of compensation is that of the driver. This liability of the driver shifts upon the owner because due to relationship of employer and employee between driver and owner the owner becomes vicariously liable for payment of compensation. It is this very vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the Statute has mandated compulsory insurance when approaches the Court/Tribunal for claiming compensation u/s 166 of the Motor Vehicles Act has necessarily to prove and establish negligence on the part of the driver of the offending vehicle and, therefore, impleadment of a driver of the offending vehicle is necessary for adjudication of a claim filed u/s 166 of the Motor Vehicles Act. The Apex Court in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, has clearly held that driver is a necessary party to be impleaded in an adjudication claim u/s 166 of the Motor Vehicles Act. The same was the view taken by the Supreme Court in Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, . Relevant para of the decision in Meena Variyal (supra) is reproduced as under:

Before we proceed to consider the main aspect arising for decision in this Appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves u/s 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed u/s 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. Secondly, the deceased was employed in a limited company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer Company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-a-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer - company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the above two aspects become relevant only if we find the insurance company liable. If we find that only the owner of the vehicle, the employer of the deceased was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it.

9. Based on the above discussion, I find myself in agreement with the contention raised by the counsel for the appellant that the driver of the offending vehicle is a necessary party to be impleaded in a claim petition filed u/s 166 of the Motor Vehicles Act. Contention of learned Counsel for the respondent that under the prescribed format specified under the Delhi Motor Vehicles Rules no such column has been inserted, has no merit as the tortuous liability to pay the compensation amount begins with a tortfeasor i.e. driver of the offending vehicle and for maintaining a petition u/s 166 of the Motor Vehicles Act, it cannot be said that a

tortfeasor is not a necessary party.

10. Coming to the next contention raised by the learned Counsel for the respondent that the present appeal filed by the appellant cannot be maintained u/s 173 of the Motor Vehicles Act and the appellant being the owner cannot be treated as an aggrieved person, more particularly, when the offending vehicle was duly insured with the insurance company and no directions have been given against the owner to pay even a part of the award amount.

11. The legal position on this issue is also well settled. u/s 173 of the Motor Vehicles Act any person aggrieved by the award of claims tribunal can prefer the appeal to the High Court. The question in the present appeal raised by the respondent is that the appellant against whom the Tribunal has not given any directions to pay or satisfy the award or any part thereof cannot be treated as an aggrieved person. u/s 149, it is the duty of the insurer to satisfy the award against the person insured in respect of third party risks. It is not that the liability of the insurer in the present case which is being disputed, however, there are restrictions imposed by the Statute and only on certain limited grounds the insurer can defend proceedings before the claim Tribunals in terms of Section 149(2) of the MV Act which is referred hereunder.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

(1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) [for under the provisions of Section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(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 of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing 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 a 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 organised 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 nondisclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in Sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall he liable to the person entitled to the benefit of the decree in the manner and to be the extent specified in Sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled Hinder the corresponding law of the reciprocating country, to be made a party to he proceedings and to defend the action on grounds similar to those specified in Hub-section (2).

(4) Where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in Clause (b) of Sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(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.

Explanation.-For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted u/s 165 and "award" means an award made by that Tribunal u/s 168.

12. There is, however, no such restriction on the rights of the owner who can defend the claim petition filed by the claimant u/s 166 of the Motor Vehicles Act to contest the claim on all grounds as are available under law. u/s 170 of the MV Act, there is a further restriction as the right of the insurer to contest the claim even all other grounds as are available to the insured unless necessary leave is granted by the Tribunal to the insurer as per the requirement of Section 170 of the MV Act. The said section is reproduced as under:

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.

The word "aggrieved" as it is understood in common parlance should include a person whose interests are prejudicially affected by any decision and who has a genuine grievance that a particular decision has adversely affected him or has denied something which was otherwise legally due to him. The Hon''ble Apex Court while dealing with such a similar question in the matter reported in Chinnama George and Others Vs. N.K. Raju and Another, 0 , came heavily upon the insurer who had filed a joint appeal along with owner of the offending vehicle although the insurer had no right to file the appeal except on the limited grounds given u/s 149(2) of the Motor Vehicles Act. Relevant paras of the said judgment are reproduced as under:

6. Admittedly, none of the grounds as given in Sub-section (2) of Section 149 exist for the insurer to defend the claims petition. The being so, no right existed in the insurer to file appeal against the award of the Claims Tribunal. However, by adding N.K. Raju, the owner as co-appellant, an appeal was filed in the High Court which led to the impugned judgment. None of the grounds on which the insurer could defend the claims petition was the subject-matter of the appeal as far as the insurer is concerned. We have already noticed above that we have not been able to figure out from the impugned judgment as to how the owner felt aggrieved by the award of the Claims Tribunal. The impugned judgment does not reflect any grievance of the owner or even that of the driver of the offending bus against the award of the Claims Tribunal. The insurer by associating the owner or the driver in the appeal when the owner or the driver is not an aggrieved person cannot be allowed to mock at the law which prohibits the insurer from filing any appeal except on the limited grounds on which it could defend the claims petition. We cannot put our stamp of approval as to the validity of the appeal by the insurer merely by associating the insured. Provision of law cannot be undermined in this way. We have to give effect to the real purpose to the provision of law relating to the award of compensation in respect of the accident arising out of the use of the motor vehicle and cannot permit the insurer to give him the right to defend or appeal on grounds not permitted by law by a backdoor method. Any other interpretation will produce unjust results and open the gates for the insurer to challenge any award. We have to adopt a purposive approach which would not defeat the broad purpose of the Act. The Court has to give effect to true object of the Act by adopting a purposive approach.

7. Sections 146, 147, 149 and 173 are in the scheme of the Act and when read together mean: (1) it is legally obligatory to insure the motor vehicle against third-party risk. Driving an uninsured vehicle is an offence punishable with an imprisonment extending up to three months or fine which may extend to Rs 1000 or both; (2) policy of insurance must comply with the requirements as contained in Section 147 of the Act; (3) it is obligatory for the insurer to satisfy the judgments and awards against the person insured in respect of third-party risks. These are Sub-sections (1) and (7) of Section 149. Grounds on which the insurer can avoid his liability are given in Sub-section (2) of Section 149.

8. If none of the conditions as contained in Sub-section (2) of Section 149 exist for the insurer to avoid the policy of insurance he is legally bound to satisfy the award. He cannot be a person aggrieved by the award. In that case the insurer will be barred from filing any appeal against the award of the Claims Tribunal.

9. The question that arises for consideration is, can the insurer join the owner or the driver in filing the appeal against the award of the Claims Tribunal as driver or owner would be the person aggrieved as held by this Court in Narendra Kumar and Another Vs. Yarenissa and Others, ? Apex Court has held that appeal would be maintainable by the driver or the owner and not by the insurer and, thus, a joint appeal when filed could be maintainable by the driver or the owner. This is how the Court held:

7. For the reasons stated above, we are of the opinion that even in the case of a joint appeal by insurer and owner of offending vehicle if an award has been made against the tortfeasors as well as the insurer even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeasor can proceed with the appeal after the cause-title is suitably amended by deleting the name of the insurer.

10. There is no dispute with the proposition so laid by this Court. But the insurer cannot maintain a joint appeal along with the owner or the driver if defence on any ground u/s 149(2) is not available to it. In that situation a joint appeal will be incompetent. It is not enough if the insurer is struck out from the array of appellants. The appellate court must also be satisfied that a defence which is permitted to be taken by the insurer under the Act was taken in the pleadings and was pressed before the Tribunal. On the appellate court being so satisfied the appeal may be entertained for examination of the correctness or otherwise of the judgment of the Tribunal on the question arising from/relating to such defence taken by the insurer. If the appellate court is not satisfied that any such question was raised by the insurer in the pleadings and/or was pressed before the Tribunal, the appeal filed by the insurer has to be dismissed as not maintainable. The court should take care to ascertain this position on proper consideration so that the statutory bar against the insurer in a proceeding of claim of compensation is not rendered irrelevant by the subterfuge of the insurance company joining the insured as a co-appellant in the appeal filed by it. This position is clear on a harmonious reading of the statutory provisions in Sections 147, 149 and 173 of the Act. Any other interpretation will defeat the provision of Sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer.

As would be evident from the decision of the aforesaid judgment wherein the earlier decision of the Apex Court in Yarennissa (Supra) was also referred. Counsel for the appellant has placed strong reliance on the decision of the Apex Court in Narender Kumar v. Yarennissa (Supra) in support of his argument that the insured being a tortfeasor cannot be denied the right to challenge the award u/s 173 of the Motor Vehicles Act as the insured in any case would be a "Aggrieved" in any claim petition arising under the Motor Vehicles Act. It would be relevant to refer the following paras from the judgment of Narender Kumar v. Yarenissa (Supra) so as to crystallize the legal proposition.

5. If a different matter that claimants normally make the insurance company a party to the claim application. That by itself cannot confer a right of appeal on the insurer. The grounds on which the insurer can defend the action commenced against the tortfeasors are limited and unless one or more of those grounds is/ are available the Insurance Company is not and cannot be treated as a party to the proceedings. 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 tortfeasors against whom the award is made which the insurer is liable to answer as if a judgment-debtor.

6. The question, however, is if such a joint appeal is preferred must it be dismissed in toto or can the tortfeasor, the owner of the offending vehicle, be permitted to pursue the appeal while rejecting or dismissing the appeal of the insurer. If the award has gone against the tortfeasors it is difficult to accept the contention that the tortfeasor is not "an aggrieved person" as has been held by some of the High Courts vide Kantilal & Bros. v. Ramarani Debi 980 ACJ 501 ; New India Assurance Co. Ltd. and Others Vs. Smt. Shakuntalabai and Others, Nahar Singh and Another Vs. Manohar Kumar and Others, Radha Kishan Sachdeva and Others Vs. L.D. Sharma and Another, merely because under the scheme of Section 96 if a decree or award has been made against the tortfeasors the insurer is liable to answer judgment "as if a judgment-debtor". That does not snatch away the right of the tortfeasors who are jointly and severally liable to answer judgment from preferring an appeal u/s 110-D of the Act. If for some reason or the other the claimants desire to execute the award against the tortfeasors because they are not in a position to recover the money from the insurer the law does not preclude them from doing so and, therefore, so long as the award or decree makes them liable to pay the amount of compensation they are aggrieved persons within the meaning of Section 110-D and would be entitled to prefer an appeal. But merely because a joint appeal is preferred and it is found that one of the appellants, namely, the insurer was not competent to prefer an appeal, we fail to see why the appeal by the tortfeasor, the owner of the vehicle, cannot be proceeded with after dismissing or rejecting the appeal of the insurer. To take a view that the owner is not an aggrieved party because the

Insurance Company is liable in law to answer judgment would lead to an anomalous situation in that no appeal would lie by the tortfeasors against any award because the same logic applies in the case of a driver of the vehicle. The question can be decided a little differently. Can a claim application be filed against the Insurance Company alone if the tortfeasors are not the aggrieved parties u/s 110-D of the Act? The answer would obviously be in the negative. If that is so, they are persons against whom the claim application must be preferred and an award sought for otherwise the insurer would not be put to notice and would not be liable to answer judgment as if a judgment-debtor. Therefore, on first principle it would appear that the contention that the owner of a vehicle is not an aggrieved party is unsustainable. That is the view taken by the High Court of Allahabad in Oriental Fire and General Insurance Co. Ltd., New Delhi and Another Vs. Smt. Rajendra Kaur, as well as the High Court of Kerala in K.R. Visalakshi and Others Vs. Pookodan Hamza and Others, commends us.

13. In the facts of the above case, joint appeal was preferred i.e., by the insured as well as by the insurer and based on the above discussion, the Apex Court came to the conclusion that if the award has gone against the tortfeasor, it would be difficult to accept the contention that the tortfeasor is not an "aggrieved person". The Court also found that merely because a joint appeal was preferred that would not mean that the appeal filed by the tortfeasor i.e., the insured of the vehicle cannot be proceeded with after dismissing or rejecting the appeal filed by the insurer.

14. As already discussed above, in a claim for compensation arising out of the motor accident, the compensation case cannot be proceeded with only by impleading the insurer of the offending vehicle. The prime liability for compensation payable to the complainant is determined against the driver and on account of relationship of master - servant between the driver and the owner, owner became vicariously liable due to the negligent act of the driver. This very liability of the driver and/or the owner who is insured in respect of the same vehicle gets transferred by virtue of the contract of indemnity entered into between the insured/owner and the insurer who undertakes to indemnify the risk of 3rd parties under the policy of the insurance issued in favour of the insured in respect of his vehicle involved in the accident.

15. Finding of fault against the party held responsible for the accident alone justifies fixing liability against such party and once the driver of the offending vehicle is found negligent in causing accident, his liability automatically shifts upon the owner and then ultimately on the insurer of the vehicle and it would be thus difficult to accept a proposition that a person against whom the tribunal passed an award, cannot be considered as an "aggrieved" party. not vested with the right to challenge the correctness of the award in an appeal filed u/s 173 of the Motor Vehicles Act. Based on the above discussion by giving purposive interpretation to the expression "The person aggrieved" u/s 173 of the Motor Vehicles Act, the insured being a tortfeasor will certainly have a right to

challenge the award, subject, however, to the condition that such an insured has been prejudiced with the outcome of the award or the award has made the insured liable to pay the award or part thereof independent of the liability of the insurer arising under the insurance policy.

16. In number of cases arising under the Motor Vehicles Act, the insurance company succeeds due to the breach of any of the conditions of the terms of the policy being one of the terms as specified u/s 149(2) of the Motor Vehicles Act and in all such cases the liability to pay the award is fastened upon the insured/ owner of the offending vehicle to ultimately satisfy the award. Certainly, in all such cases, the insured/owner would be an aggrieved person and will have every right to maintain the appeal u/s 173 of the Motor Vehicles Act. There may be many other cases where the involvement of the driver and vehicle of the owner itself is in dispute and given facts are sufficiently proved on record, then in such cases it may be totally unjust to fix the liability of the insurer to pay the compensation amount.

17. In the backdrop of the aforesaid discussion, I am of the view that in all those cases where the insured/owner has been made liable to pay or satisfy the award amount or any case where directions have been given by the Tribunal substantially affecting the rights of the insured/owner of the offending vehicle, or findings given by the Tribunal are wholly unjust, perverse or ex-facie illegal which has the affect of causing serious prejudice to the rights of the driver/owner of the offending vehicle, the appeal u/s 173 can certainly be maintained by the owner/ driver of the offending vehicle. Although, no exhaustive instances can be illustrated where the driver/owner can be held entitled to file an appeal u/s 173 of MV Act as each case would depend on its own facts and merit, yet, however, in all those cases where prima liability to pay the award has been fastened upon the insurance company alone, this, however, will be subject to the right of the insurance company which is available to it under the law to challenge the award passed by the tribunal, the insured/owner of the offending vehicle cannot be allowed to file an appeal as a proxy for insurance company. This holistic view and purposive interpretation of the said provisions of the M.V. Act, the same being a beneficent piece of legislation, would lead to achieving larger social objective of providing speedier justice to the victims of the accident cases.

18. In the light of the above discussion, the appellant who is owner of the insured vehicle cannot maintain the present appeal as in the impugned award the tribunal has not given any direction to the appellant to pay or satisfy the award amount. Directions have been given only against the insurance company to deposit the amount of award along with interest, and therefore, the appellant in the present case cannot be treated as an ''aggrieved'' person u/s 173 of the Motor Vehicles Act.

19. The non-impleadment of the driver of the offending vehicle was fatal as already held above, but keeping in view the fact that insurer has already complied the award arising out of the same accident in the case of an injured

person and also the fact that no serious attempt was made to implead the driver before the Tribunal, I do not feel inclined to remit the award on this ground for de-novo trial of the case. The remand of the case will also not be justified when there is no dispute that criminal case was registered against the same driver alone and insurance of the vehicle also not being in dispute. Since the appeal filed by the appellant is not maintainable, therefore, all other contentions raised by the appellant including that of challenge made on the ground of quantum of compensation become inconsequential and devoid of any force.

20. There is no merit in the present appeal and the same is hereby dismissed.

