

(2011) 03 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 156 of 2011 (O and M)

Reliance General Insurance Company

APPELLANT

Vs

Puran Singh and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2), 170, 173

Citation : (2011) 163 PLR 489

Hon'ble Judges : Ram Gopal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The appeal is by the insurance company on the issue of quantum. Learned counsel refers me to the judgment in National Insurance Company Ltd. Vs. Meghji Naran Soratiya and Others, and refers me to the passage in the judgment that reads:

There is a prevalent view that a rethink on Sections 149 and 170 of the Act is necessary. As noticed above, Sections 149 contemplates claim petitions being filed only against the driver and the owner, and the driver/owner alone contesting the claim on merits. The insurer is required to satisfy the award made by the Tribunal, even if it is not impleaded as a party to the claim proceedings. But in practice, the insurer is invariably made a party to the claim proceedings, presumably to avoid any kind of delay. It is also a reality that drivers who are primarily liable seldom contest the proceedings either because of their financial incapacity or because they know that the burden will be borne vicariously by the owner and by the insurer under the policy of insurance. It is also a reality that many of the owners do not appear and contest the claim proceeding, or even if they appear and file a reply, do not defend the claim by effectively cross-examining the claimant's witnesses and by leading defence evidence. Owners are complacent as they have an insurance cover and know that the insurer will bear the liability. In practice therefore the insurer has to keep on goading the

owner to contest the matter and place necessary evidence. Section 170 provides that if the driver/owner fail to contest the claim, the Tribunal may permit the insurer to contest the claim. But what, if the driver/owner file a reply but fail to effectively participate in the proceedings? What if the counsel for driver/owner are present but resort to only cursory cross-examination? What if the driver/owner do not at all lead defence evidence? What if there is a well-planned collusion that does not meet the eye? Where the insurer does not get permission u/s 170, there is a reasonable chance of the defence to the claim being far from satisfactory. Judicial notice can also be taken of the fact that there have been several false claims by claimants in confusion with the owners/drivers of vehicle and/or Police and/or doctors. The question raised is whether it is proper to prohibit the insurer, which is to bear the liability statutorily and contractually, from participating in the process of adjudication of liability and assessment of compensation? Or the statute having made the insurer directly liable to the claimants, should the insurer be given a direct right to contest the claim on merits without the technical requirement of permission? Should the insurer always be at the mercy of the owner to contest the claim? These are matters that invite serious consideration, particularly by the Parliament and Law Commission and other stakeholders. Be that as it may.

2. The insurer is not always a necessary party in the claim petition for compensation as an insured is. The insurance company is however, a proper party in order that the claimant secures the award and enforces it against a solvent insurer. In a case where insurance company is not a party and where there is a scope for a suspicion that there is a collusion, the Tribunal shall order notice to the insurance company. It shall become possible for the insurance company to seek for an adjudication and take a defence on all grounds specifically by moving an application before the Tribunal u/s 170 of the Motor Vehicles Act. The defenses which are curtailed to an insurer in other situations shall inevitably be only to what are provided u/s 149 of the Motor Vehicles Act. The decision of the Hon''ble Supreme Court while it points out that there could be serious issues of false claims by claimants in collusion with the owners, driven of the vehicles or with the police, merely exhorts to the Parliament and the Law Commission and other stake holders to take notice of this serious consideration. I do not find anything emerging from this observation to say that an insurance company would be competent to maintain a case on the issue of quantum and negligence at an appellate forum. What the Hon''ble Supreme Court could do in a jurisdiction under Article 142 or what the Parliament could do to make the law for allowing the insurer to take all defence including the issue of quantum and negligence, shall not be what this Court will do in its jurisdiction as an appellate forum u/s 173 of the Motor Vehicles Act.

3. The Supreme Court traced the legislative history to the limited grounds of defence u/s 149 available to the insurer in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, and said that the intention of the legislative was to protect third party rights and not the insurer (see paragraphs

10 to 13). The appeal by the insurer on the issue of quantum and negligence was found not maintainable, even in a case where the insured had been made a party in *R. Mannakatti v. M. Subramanian* (2005) 11 S.C.C. 389. This position had been already answered still earlier in *Jagdish Prasad Pandey v. Darshan Singh and another*, (2002) 9 SCC 527; *United India Insurance Co. Ltd. Vs. Jyotsnaben Sudhirbhai Patel and Others*, . There could be instances where there is a patent error in the order of Tribunal on the issue of quantum or entitlement or application of principle of law. It could be better corrected through resort to review before the Tribunal. To test the correctness in appeal by the insurer shall inevitably stay restricted to what are provided u/s 149(2) of the Motor Vehicles Act. This alone can pave way to certainty in judicial approach. It shall be no judicial wisdom to re-appraise in every case, whether the Tribunal has approached the issue of quantum correctly. That would amount to timbering with the provisions of the Motor Vehicles Act. Let the legislative show the way. I refuse audience to the insurance company to join issues on the question of quantum and negligence.

4. The appeal is dismissed as not maintainable.