

(2011) 08 SHI CK 0250
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 156 of 2011

Sanjay Kumar

APPELLANT

Vs

Jamna Devi and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 149(2), 149(3), 166, 170

Citation : (2011) 3 ShimLC 40

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—Present petition has been filed by the Petitioner under Article 227 of the Constitution of India challenging the order passed by the learned Motor Accident Claims Tribunal, Shimla, dated 19.3.2011, vide which the application moved by Respondent No. 3/Insurance Company was allowed.

2. Briefly stated, the facts of the case are that the Petitioner filed a petition u/s 166 of the Motor Vehicles Act, here-in-after referred to as the Act, for grant of compensation as against the Respondents. Reply to the petition was filed by Respondents No. 1 and 2. Respondent No. 3 filed an application u/s 170 of the Act to contest the petition and the learned Tribunal vide its impugned order allowed the said application.

3. I have heard the learned Counsel for the parties and have gone through the record of the case.

4. The facts of the case are clear that the case was pending before the learned Tribunal and Respondents No. 1 and 2 had filed their reply. Respondent No. 3 had also filed the reply and on the same date, it also filed an application for permission u/s 170 of the Act to contest the case. On the same date i.e. on 19.3.2011, the learned Tribunal allowed the application without giving an

opportunity to the Petitioner or other Respondents to contest the allegations made in the application in regard to the collusion or to file reply and on the same date when the application was filed, the impugned order was passed by the learned Tribunal on 19.3.2011. The impugned order reads as under:

The Respondent No. 3 had filed an application u/s 170 of the M.V. Act. Copy supplied to the parties. The Respondent No. 3 wanted to contest the claim case on all grounds available to it. Since the Respondents No. 1 and 2 did not report the accident to the Insurance Company forthwith, as required under the Motor Vehicles Act and the terms and conditions of the Insurance Policy, the Respondent No. 3 (Insurer) is permitted to contest the case on all the grounds. The application u/s 170 of the Motor Vehicle Act is allowed. Be tagged with the main.

5. The learned Counsel for the Petitioner has challenged the impugned order on the ground that there were no specific allegation in regard to collusion and simply the fact that Respondents No. 1 and 2 did not report the accident to the Insurance Company, the impugned order was passed by the learned Tribunal. Section 170 of the Act specifically provides two grounds on which such application has to be allowed. Section 170 of the Act reads 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 - 3 149, 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.

6. It is clear that in the present case neither an opportunity was given to the Respondents or the Petitioner to file reply nor any opportunity was given to contest the application and simply on the allegations made, the learned Tribunal passed the impugned order. No reasons have been recorded while allowing the application. Prima facie, there does not appear to be any collusion once Respondents No. 1 and 2 had filed a reply and were contesting the petition on merits also.

7. My attention has been drawn to a judgment passed by this Court in CMPMO No. 97 of 2006, titled Seema Devi and Ors. v. New India Company and Ors., dated 4.9.2006, certified copy of which has been shown during the course of arguments. The facts of the said case are similar to the present facts and in that case also, it was observed that the learned Tribunal had allowed the application

in a slipshod manner and without assigning cogent and valid reasons in support of the order. In that case also, No. opportunity was given to the non applicants to contest the application or file reply. The observations made in that case are relevant and are being reproduced below:

Coming to the facts of the case, whereas presently the New India Assurance Company already stands impleaded as a party-Respondent in the Claim Petition, it had filed an application limited to the relief of claiming the right to contest the Claim Petition on the grounds available to the persons against whom the claim has been made, namely, Respondents No. 1 and 2. Not only has the application been allowed by passing the impugned order in a slipshod manner, the learned Tribunal before passing the order did not even afford any opportunity to Respondents No. 1 and 2 in the Claim Petition (Respondents No. 2 and 3 herein) to file their replies to the application, especially also because specific allegation was made qua these Respondents to the effect that the claim petition had been filed between the claimants and Respondents No. 1 and 2 in collusion with each other and that Respondents No. 1 and 2 had failed to contest the claim petition. Whereas objections had been invited from and were filed by the Petitioners-claimants to the aforesaid application, No. such objection or reply was invited from Respondents No. 1 and 2 in the Claim Petition. I am surprised to find out that the learned Tribunal proceeded to decide the application on its merits without having before it the version of Respondents No. 1 and 2 in the Claim Petition.

8. Applying the dictum of law laid down in that case, it is clear that No. case was made out for allowing the application filed by Respondent No. 3 u/s 170 of the Act. Therefore, the present petition is allowed and the impugned order is set aside. Copy of the order alongwith the record of the case be returned back to the learned Tribunal to proceed with the case in accordance with law. The parties, through their counsel, are directed to appear before the learned Tribunal on 23.8.2011.

9. The petition stands disposed of accordingly, so also the pending application(s), if any.