

(2001) 03 KAR CK 0056

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 714 of 2001

Surendra Prabhu and Another

APPELLANT

Vs

Sripada Rao Shankararao Patil and Another

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2001) ACJ 1504 : (2001) 4 KarLJ 344 : (2001) 3 KCCR 1910

Hon'ble Judges : K.R. Prasad Rao, J; Hari Nath Tilhari, J

Bench : Division Bench

Advocate : Sri B.C. Seetharama Rao, for the Appellant;

Judgement

Hari Nath Tilhari, J.—This appeal arises from the judgment and award dated 29th of September, 2000 delivered by Sri M. Ramesh Rao, Additional Civil Judge (Senior Division) and Motor Accidents Claims Tribunal, Davanagere awarding a total sum of Rs. 7,61,500/- in M.V.C. case No. 1370 of 1995. The appeal has been filed by New India Assurance Company Limited with Sri Surendra Prabhu, appellant 1.

2. It will be appropriate to mention the facts of the case, in brief as hereunder:-

On 28-5-1995 at about 7.30 p.m., on N.H. 4 near Kalapanahalli, the motor accident took place and the offending vehicles in that accident were Car No. KA-03-M-2089 and Mini-Bus No. KA-13-4545, referred in the judgment of the Tribunal as well as the judgment of this Court as "Car" and "Mini Bus". It may be stated that many claim petitions were filed including Claim Petition No. 1370 of 1995. It is the case of the claimants/petitioners in M.V.C. No. 1370 of 1995 that the deceased was aged 27 years and died on account of the injuries caused in course of accident, in spite of medical service being rendered. The claimants made claim for a total sum of Rs. 15,40,000/- under different counts. It was alleged that the deceased was at the time of accident working as Medical Representative of Johnson and Johnson Limited, Bombay and was getting Rs.

4,082/- per month plus other allowances and his total monthly income was Rs. 10,000/-. It may be mentioned here that apart from M.V.C. case No. 1370 of 1995, there were 11 other M.V.C. cases. All the cases were tried together and disposed of by the Tribunal by one common judgment. In all the cases, the driver and the owner of mini-bus, remained absent and the respondent 3 before the Tribunal i.e., Oriental Insurance Company, with which the Mini bus was insured, filed the written statement. That the respondent 4 before the Tribunal i.e., Surendra Prabhu, the owner of the Car, did not file written statement actually. What did take place was that the present appellant 2-New India Assurance Company filed its written statement raising all sorts of pleas including those not permissible to be raised by Insurance Company under the provisions of Section 149 of the Motor Vehicles Act, 1988 (for short "the Act"). We mean to say that New India Assurance Company raised the pleas in defence not only those that were available to the Insurance Company, but also those that could be available to the insured only and not to insurer and written statement was filed by it, Later on it appears from the narration of facts that the owner of the Car is said to have adopted the written statement filed by the insurance company i.e., appellant 2, who was respondent 5 before the Tribunal. As I mentioned earlier, neither, the driver nor the owner of the car had filed their separate written statements. The Tribunal after examining the evidence, no doubt held that the accident had taken place on account of the contributory negligence to the extent of 50% of each of the drivers of the Mini bus as well as of the Car in question. The Tribunal after recording this finding with reference to the Case No. 1370 of 1995 held that the claimants in that case are entitled to a sum of Rs. 7,61,500/- in total, on all counts as compensation and held that driver, owner and insurer of car on one hand as well as owner, driver and insurer of Mini Bus were liable jointly and severally to pay the compensation awarded with interest thereon in proportion to the contributory negligence of the drivers of car and mini-bus as held and found.

3. That as mentioned earlier, the appeal has been filed jointly by the Insurance Company i.e., insurer of the car i.e., New India Assurance Company, with the insured i.e., owner of the car who were respondents 4 and 5. On a question being posed, before the learned Counsel for the appellant, as to how the appeal is maintainable, in view of the provisions of Sections 147, 149 and 173 of the Motor Vehicles Act, in the circumstances of the case. The learned Counsel for the appellants contended that the written statement filed by the Insurance Company had been adopted by the owner. He further contended that when the written statement filed by the Insurance Company had been adopted by the owner, the appeal, at the instance of both, can be maintained and particularly, on the question of quantum of compensation, as owner has adopted the written statement of Insurance Company and therefore, both are entitled to file the appeal. Learned Counsel further contended that in view of the insurance policy, it was open to the Insurance Company to avail all the pleas, which were available to the insured. Learned Counsel appears to intend to submit that in such case, Section 149 will not debar the Insurance Company from availing the defences

and pleas available to insured, while filing the appeal. Learned Counsel for the appellants further contended that the Insurance Company is entitled to take those pleas. Learned Counsel has been very fair to point out that no application for permission was moved u/s 170 of the Motor Vehicles Act nor any permission was granted to the Insurance Company, to avail the grounds or defences which are available to the insured in such cases. Learned Counsel contended that as the Insurance Company will have to pay the money under the decree and Section 173 of the M.V. Act does not put any bar against the rights of the appellant/insurer to file an appeal, it is open to the Insurance Company to avail pleas which are available to the insured and to challenge the quantum of compensation awarded if that has been granted arbitrarily or illegally. Learned Counsel for the appellants, Sri Seetharama Rao in support of his contention that as the owner of the motor adopted the written statement filed by the Insurance Company so appeal is maintainable as the instance of both invited the attention of the Court to, the provisions of Order 1, Rule 8 of the CPC and argued that, it was open to the Insurance Company to take those defences as are open to be taken as defence by the owner-insured.

4. We have applied our mind to the contentions raised by the learned Counsel for the appellant as regards the question of maintainability of the appeal. Before we proceed further, it will be appropriate to refer to the provisions of Motor Vehicles Act, in particular, reference is to be made to the provisions of Sections 149 and 173 of Motor Vehicles Act and Order 1, Rule 8 of the Civil Procedure Code, referred to by the learned Counsel for the appellants. Section 149 of the Motor Vehicles Act, 1988 reads as under:-

"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 163-A) 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 as 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 or 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 non-disclosure 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 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 be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment was given by a Court of 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 under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-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 conditions 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 sub-section 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 expressions "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".

(emphasis supplied)

Sub-section (1) of Section 149 provides that once the certificate of insurance has been issued u/s 147(3) in favour of the person by whom, a policy has been effected, the judgment or award in respect of any such liability as is required to be covered by the policy which is obtained against any person insured by the policy then, the insurer notwithstanding that he may be entitled to avoid or cancel the policy, the insurer shall, no doubt subject to the provisions of Section 149(2) and defences available thereunder, be liable to pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable therein in respect of liability, together with any amount payable in respect of cost or interest by virtue of the provisions of any enactment relating to interest on judgments.

5. That Section 147(5) of the Motor Vehicles Act also provides that notwithstanding anything contained in any Jaw for the time being in force, the insurer shall be liable to indemnify the person or persons or class of persons specified in the policy in respect of the liability which policy purports to cover in

case of that person or those class of persons.

6. That sub-section (2) of Section 149 provides that before the sum could become payable, under the judgment or award, it is necessary that before commencement of the proceedings in which the judgment or award has been given, insurer must be given a notice through the Court or as the case may be, by the Tribunal about the bringing of the proceedings, or in respect of such judgment or award and when he has been given notice, insurer shall be entitled to be made a party and to defend and to take defence in action, on the grounds specified in Section 149(2)(a) and (b). Clauses (a) and (b) thereof, very clearly indicate that the claim can be contested on the ground of breach of specified condition of the policy, being one of the breach conditions as Section 149 mentioned in sub-section (2)(a), sub-clauses (i)(a) to (d) and (ii), (iii) of clause (a) as well as on the ground of policy being void for having been obtained by misrepresentation or non-disclosure of material or vital fact vide Section 149(2) (b). That the expression "Breach of conditions.--used in Section 149(2)(a) or expression "Breach" used in Section 149(2) has been the subject of consideration by Supreme Court in very many cases by the Hon"ble Supreme Court and has been held to mean conscious, known breach, willful breach. A perusal of sub-section (7) of Section 149 very clearly reveals that it provides that 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 (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. This reading of sub-section (7) per se reveals that no defence otherwise than available u/s 149(2) shall be available to the insurer and it is not entitled to take any other defence in its written statement. Section 149 bars the insurer and deprives the insurer of taking any defence otherwise than mentioned in Section 149(2). This means, that insurer is not entitled to take any of the defences that may be available to the insured or to the driver of the vehicle, Law is very specific and confines the defences available to the Insurance Company. This section is analogous and is almost in the same terms as Section 96 of the Motor Vehicles Act, 1939 and sub-section (6) of Section 96 also contains the provisions same as u/s 149(7) of the Act of 1988. Section 96 had been subject-matter of consideration by Lordships of the Supreme Court in various decisions, namely, British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, . In para 4 and other relevant paragraphs thereof, their Lordships observed as follows.-

"It may be stated that the policies that were effected in these cases were in terms of the Act and the certificate of insurance mentioned in Section 96 had been duly issued. It will have been noticed that sub-section (1) of Section 96, makes an insurer liable on the judgment obtained by the injured person against the assured".

In paragraph 5, their Lordships further observed as follows.-

"To start with, it is necessary to remember that apart from the statute an insurer has no right to be made a party to the action by the injured person against the insured causing the injury. Sub-section (2) of Section 96 however, gives him the right to be made a party to the suit and to defend it. The right therefore is created by statute and its content necessarily depends on the provisions of the statute. The question then really is, what are the defences that sub-section (2) makes available to an insurer? That clearly is a question of interpretation of the sub-section".

Dealing with sub-section (2), their Lordships in paragraph 6 further observed as under.-

"Now the language of sub-section (2) seems to us to be perfectly plain and to admit of no doubt or confusion. It is that an insurer to whom the requisite notice of the action has been given "shall be entitled to be made a party thereto and to defend the action on any of the following grounds namely", after which comes an enumeration of the grounds. It would follow that- an insurer is entitled to defend on any of the grounds enumerated and no others. If it were not so, then of course no grounds need have been enumerated. When the grounds of defence have been specified, they cannot be added to. To do that would be adding words to the statute".

In paragraph 7, their Lordships further observed that.-

"Sub-section (6) also indicates clearly how sub-section (2) should be read. It says that no insurer to whom the notice of the action has been given shall be entitled to avoid his liability under sub-section (1) "Otherwise than in the manner provided for in sub-section (2)". Now the only manner of avoiding liability provided for in sub-section (2) is by successfully raising any of the defences therein mentioned. It comes then to this that the insurer cannot avoid his liability except by establishing such defences. Therefore, sub-section (6) clearly contemplates that he cannot take any defence not mentioned in sub-section (2)".

Here as mentioned earlier, sub-sections (2) and (6) of Section 96 are in pari materia and in same language as sub-sections (2) and (7) of Section 149 of the Act of 1988. The above decisions very clearly throw light on the interpretation of Section 149(2) and 149(7) of the Motor Vehicles Act, 1988. The very view has also been taken by the Division Bench of this Court in the case of New India Assurance Co. Ltd. Vs. Raja Naika and another, . In the context of Section 149(2) read with Section 30(1) of the Workmen's Compensation Act dealing with the right of appeal by insurer and the scope of grounds of appeal available to the insurer, it has been laid down by the Division Bench of this Court, that no appeal will lie u/s 30(1) of the Workmen's Compensation Act on the grounds other than covered by Section 149(2) of the Act, no doubt subject to further condition that such grounds involve substantial questions of law. The Division Bench in the case of Oriental Insurance Co. Ltd. Vs. Veronica Obrin (Smt.) and Others, , has

followed the decision referred to above. In this case also, the view has been taken that defences that are open to the Insurance Company are only those that are covered by Section 149(2) read with sub-section (7). In this connection, there is another decision of this Court delivered by one of us sitting single, namely in the case of National Insurance Company Limited v Obalesh and Another .

7. That learned Counsel for the appellants contends that the written statement filed by the Insurance Company was adopted by the insured and so, the appeal is maintainable and the insured and insurer both are aggrieved by the compensation awarded. He contends that when the pleas which the Insurance Company had raised have been adopted by the insured, as such it can be said that the insured was also an aggrieved party. Firstly, the question is whether the pleas which could have been raised by the insured, not having been raised by him, but, were only raised by the Insurance Company in the written statement could be taken to be to have been in existence in the eye of law, to be permitted to be adopted. In our view, when the law did not permit the Insurance Company to raise any plea other than the one covered by Section 149(2) in view of the Section 149(2) read with Section 149(7) of the M.V. Act, those pleas which could not be raised, could be taken to be non est and could be non-existent. A person cannot be allowed to render law redundant by playing fraud or by trying to move in circuitous way. When the pleas which could not be raised in view of Section 149(2) and 149(7) of the M.V. Act by insurer, and had been taken by it in its written statement illegally or unauthorisedly, it is to be deemed non est. Unauthorised action is non est and those pleas have to be deemed to be not in existence. So, could not be adopted nor to be permitted to be adopted by insured. Learned Counsel contended that common Counsel was appearing for both insured and insurer. But, appearance of a common Counsel cannot be a circumstance to allow the variation or escape from the rigours of law. Learned Counsel referred as mentioned above to provision of Order 1, Rule 8 of the CPC as well as Section 169 of the Motor Vehicles Act, 1988, which deals with the procedure and powers of the Tribunal. Section 169 of the Motor Vehicles Act reads as under:-

"169. Procedure and powers of Claims Tribunals.--(1) In holding any inquiry u/s 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedures as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose

one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the enquiry".

(emphasis supplied)

A perusal of sub-section (2) provides that the Tribunal shall have powers of Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed. The expression "prescribed" has been defined in the Act to mean as prescribed by the Rules framed under the Act vide definition clause, namely Section 2(32) of the Act. Therefore, it will also be appropriate to make a reference to the Rules framed under the Act. Rule 254 of the Karnataka Motor Vehicles Rules, 1989 framed u/s 176 of the Act provides procedure of holding enquiry and it reads as follows.-

"The following provisions of the Code of Civil Procedure, 1908, shall, so far as may be, applied to the proceedings before every Claims Tribunal, namely.-

Clause (b).--In the First Schedule, Order 5, Rules 9 to 13 (both inclusive) and 15 to 30 (both inclusive); Order 6, Rules 4, 5, 7, 10, 11, 16, 17 and 18, and Order 7, Rule 10; Order 8, Rules 2 to 5 (both inclusive), 9 and 10, Order 9; Order 11, Rules 12 to 15 (both inclusive), 17 to 21 (both inclusive) and 23; Order 12, Rules 1, 2, 3-A, 4, 7 and 9; Order 13, Rules 3 to 10 (both inclusive); Order 14, Rules 2 and 5; Order 16; Order 17; Order 18, Rules 1 to 34 (both inclusive); Order 19, Rules 10 to 12 (both inclusive) and 15 to 18 (both inclusive); Order 20, Rules 1 to 3 (both inclusive); 8, 11 and 20; Order 21; Order 22, Rules 1 to 7 (both inclusive) and 9; Order 23, Rules 1 to 3 (both inclusive) and 9; Order 24; Order 26, Rules 1 to 8 (both inclusive) and 15 to 18 (both inclusive); Order 27; Order 28; Order 29; Order 30, Rules 1, 3 to 8 (both inclusive) and 10; Order 32, Rules 1 to 15 (both inclusive); Order 37, Rules 1 to 11 (both inclusive); and Order 39, Rules 1 and 3 to 5 (both inclusive); and Order 39. Insofar as the Act and these Rules make no provision or make insufficient provision, the relevant provisions of the Code of Civil Procedure, 1908 shall so far as may be, apply to the proceedings before the Claims Tribunal".

A perusal of Rule 254, clause (b) per se reveals that none of provisions of the Order 1 of the Civil Procedure Code, has been made applicable for the matters or proceedings before the M.A.C.T. In view of these provisions of law, in our opinion, Order 1, Rule 8 referred to by the learned Counsel for the appellant is not applicable. Apart from this fact and the above, CPC is a general law, relating to procedure to be followed before the Civil Court. The Motor Vehicles Act, is a special law and makes special provisions. What are the defences that are made available to the insurer have been specified in Section 149(2) of the Act and no defence beyond that can be taken, as per the law that has been declared and laid down by sub-sections (2) and (7) of Section 149, which is pari materia to sub-sections (2) and (6) of Section 96 of the old Motor Vehicles Act. In view of this

special provision and if for a moment, we take that there is a conflict between the two provisions though, in our opinion Order 1, Rule 8 does not apply, but, for arguments sake, if it is taken that there is a conflict and inconsistency between the two provisions, namely, special provisions of the Motor Vehicles Act, namely Sections 149(2)(7) and 170 of the M.V. Act of 1988 and the provisions of Order 1, Rule 8 of the Civil Procedure Code, in such circumstances, it is well-settled principle of law that special law will prevail over the general law and therefore, the Order 1, Rule 8 will also not apply.

8. Any other interpretation may have tendency to render Section 149(2)(7) as well as Section 170 of M.V. Act superfluous and otiose. It is well-settled principle of law of interpretation of statute that an interpretation which has tendency to nullify or render a provision otiose should be avoided. The provisions of appeal as contained in Section 173 of the Act reads as under:-

"173. Appeals.--(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. (2) No appeal shall lie against any award of a Claims Tribunal, if the amount disputed in the appeal is less than ten thousand rupees".

The right to appeal is given to a person aggrieved by the award, who is aggrieved party and who can be said to be aggrieved by the award. The said expression "person aggrieved" has to be interpreted in the context of other provisions of the Act, namely Section 149(2) and 149(6). A person cannot be said to be aggrieved with respect of a matter of plea or defence to which he is not entitled to raise any defence. If any defence is available u/s 149 and the same had been raised by the Insurance Company, it would have been negated or answered in negative by the Tribunal, no doubt, the insurer could be said to be aggrieved by the award. There can be a situation when the Insurance Company could be said to be aggrieved from award in case where the Insurance Company makes application u/s 170 of the Motor Vehicles Act, for being permitted to avail the defences which are available to the insured and the Tribunal permits him to raise those defences. Then, no doubt, the Insurance Company could be said to be aggrieved with reference to the defences including those defences, which can be raised after leave being granted u/s 170, as to the cause of the accident or the quantum of compensation to be awarded or awarded. Unless the procedure prescribed u/s 170 of the Act has been followed

or shown to have been followed and unless the insurer is shown to have been permitted to raise the defences available to the insured, the insurer cannot be permitted to expand the scope of defences or scope of ground of challenge in appeal by raising the grounds which were not available to the insurer in view of the provisions of Section 149(2) and 149(7) of the Act of 1988 or in view of the provisions of Section 96(2) and 96(6) of the Act of 1939. It is one of the well-settled principles of law of interpretation that no interpretation should be given which may result in rendering provisions of law redundant. If the interpretation urged by the learned Counsel for the appellant is accepted that the insurer is aggrieved because it has to pay the amount and therefore, it is open to him to raise all the grounds and to challenge the quantum of compensation awarded or to challenge the findings regarding the cause of the accident then, it will tantamount to render Section 149(2) and 149(7) of the Act of 1988, redundant. No person can be permitted to expand the scope of his defences at the stage of filing the appeal which defences were not available to him at the stage of original proceedings. In this view of the matter, in our opinion, the Insurance Company is not entitled to avail those defences or grounds which are available to insured. As regards the appellant, 1, appellant 1 did not file any written statement. Appellant 1-owner stated that he wanted to adopt the defences of the Insurance Company. If the appellant 1 is allowed to adopt the defences which the insurer could not raise under law in view of Section 149(2) and 149(7) of the Act, though which defences taken by Insurance Company in the written statement are to be deemed as null and void and ineffective and non-existent, then that will again have a tendency to make the said sections i.e., Sections 149(2); 149(7) and 170 of the Act redundant and superfluous and nugatory. The provisions of Section 170 of the Motor Vehicles Act provides that insurer can be permitted to raise those defences as are available to the insured, in the circumstances and conditions specified in Section 170. In this view of the matter, in our opinion, as the insured has not filed any written statement and did not contest merely because their Counsel was common cannot provide an excuse or escape to the appellants to get rid from the rigour of law and the provisions of law. The insured cannot be held to be aggrieved by the judgment and award of the Tribunal as he had not filed any written statement and whatever he had filed is only desire of adopting defences, which could be raised by the insurer and which have been raised u/s 149(2)(7) of the Act which, means the only limited defences available to insurer and no other defences. The grounds of defences, though raised by insurer, which under law the insurer could not raise, being non-existent in written statement of insurer in the eye of law, cannot be taken to be in existence and so could not be adopted by defendant-owner or insured and so insured cannot be deemed or considered to be aggrieved person u/s 173 of the Act. Thus considered in our opinion, the appeal jointly filed by the insurer and the insured, is not maintainable and when we so find, we find support from the decision no doubt of the Division Bench of this Court as has been referred to above namely, in the cases of Raja Naika, supra and Veronica Obrin, supra. We further find support for our view from the earlier Single Judge decision of this Court in the

case of National Insurance Company Limited, supra and from the decision of the Supreme Court in the case of Chinnama George and Others Vs. N.K. Raju and Another, .

9. Thus in our considered opinion, the present appeal as such is not maintainable and is hereby dismissed as not maintainable. The amount deposited by the Insurance Company shall be transferred to the Tribunal.

ORDER ON ORAL APPLICATION FOR CERTIFICATE UNDER ARTICLE 133 OF THE CONSTITUTION

The learned Counsel for appellants orally prayed for the grant of Certificate of Fitness for appeal to Supreme Court under Article 133 of the Constitution.

We have considered the request and in our view the law on the subject of scope of appeal u/s 173 read with Section 149(2)(7) of the Motor Vehicles Act as well as u/s 30 of Workmen's Compensation Act read with Section 149(2)(7) of Motor Vehicles Act and scope of ground available to Insurer, i.e., Insurance Company, has been declared and laid down by Hon''ble Supreme Court in the decision referred to in our judgment delivered today in the miscellaneous first appeal as such this do not appear to be a fit case for grant of certificate under Article 133 of the constitution. We, therefore, reject the prayer made by appellants' Counsel.