

(2006) 04 KAR CK 0039
In the Karnataka High Court
Case No : M.F.A. No's. 5311 and 5086 of 2005

The Branch Manager, The New India Assurance Co. Ltd.

APPELLANT

Vs

Dharmanna Bansode and Others
 United India
Insurance Co. Ltd. Vs Dharmanna Bansode and Others

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149 (2), 170, 172, 173

Citation : (2007) ACJ 1858 : (2007) 3 KarLJ 305

Hon'ble Judges : V. Gopala Gowda, J;Jawad Rahim, J

Bench : Division Bench

Advocate : M. Narayanappa, in M.F.A. No. 5311 of 2005 and A.M. Venkatesh, in M.F.A. No. 5086 of 2005, for the Appellant; V.M. Sheelavanth, for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

1. These Miscellaneous First Appeals under provisions of Section 173(1) of the M.V. Act, 1988 (In short "the Act"), are directed against the judgment and award dated 14-02-1995 passed in MVC 1/2002 on the file of MACT-I & Principal District Judge, Bijapur awarding compensation of Rs. 7,50,000/- with Interest @ 8%PA to the claimants.

2. The award in MVC 1/2002 is passed in a claim petition preferred by the parents, brothers and sisters of one Manoj Kumar, who died in a motor vehicle accident on 08-11-2001 involving car bearing registration No. PB-08 / and-6219 and truck bearing registration No. HR-38 / D-3719. The accident is said to have occurred on Bombay-Pune Highway near Nalgaon Village, within the territorial jurisdiction of Wadagaon-Moval Police Station.

3. The factual matrix manifest from the records reveals:

That Manoj Kumar, a bachelor, employed as Sales Executive in M/s Aries Agro Vet Industries Limited, while on official duty was returning from Bombay in a car

bearing registration No. PB-08 / N-6219, driven by Thomas Anthony. Though the car was driven at moderate speed, cautiously by the driver, but one Ramesh, driver of goods truck bearing registration No. HR-38 / D-3719, drove his vehicle in a rash and negligent manner and by such reckless act, dashed against the car generating severe impact resulting in several Injuries to the person of Manoj Kumar, to which he succumbed.

4. The claimants, who are parents, brother and sister of Manoj Kumar, sought grant of compensation in a sum of Rs. 33,09,000/- on the basis that the deceased had monthly Income of Rs. 16,000/- and had a bright future. Had he survived he would have achieved highest position in the establishment and consequently increase in his earning. The petitioners were totally dependant on him and due to his death they lost not only love and affection but dependency.

5. In their petition driver and owner of the Car bearing registration No. PB-08 / N-6219 are arraigned as respondents 4 and 5, while New India Assurance Company, the insurer of the Car bearing registration No. PB-08 / N-6219, was arraigned as respondent No. 6. The driver of the offending truck bearing registration No. HR-38 / D-3719 was arraigned as first respondent and its owner as respondent No. 2 and the Insurer - United India Insurance Company, was arraigned as respondent No. 3.

6. MFA 5086/05 is preferred by the United India Insurance Company, insurer of the goods vehicle bearing registration No. HR-38 / D-3719 and MFA 5311/05 is preferred by the New India Assurance Company, insurer of the car bearing registration No. PB-08 / N-6219.

7. The owner/insured of the vehicles involved in the accident namely Car bearing registration No. PB-08/N-6219 and the owner/insured of the goods truck bearing No. HR-38/0-3719 nor the claimants have challenged the impugned award. But, it is necessary to refer to the defence put forward by them as also the insurers of the vehicles before the Tribunal.

8. The owner of the Car in which the deceased Manoj Kumar was travelling, in its statement of objection admitted certain aspects canvassed by the claimants relating to the employment and income of the deceased. It admitted that the deceased Manoj Kumar was employed in it (Aries Agro-Vet Industries Limited, Solapur) and was paid gross salary of Rs. 1,15,830/- per annum; that he was on official duty and while returning from Bombay, suffered injuries in an unfortunate road accident and died. It admitted there was no negligence in driving of the Car and attributed act of negligence to the driver of the goods vehicle. However, while so contending it also mentioned that even if the Tribunal were to hold there was any negligence in driving of the Car, consequent award, if any, that may be passed had to be discharged by the insurer of the vehicle, viz, New India Insurance Company. The Insurer - New India Insurance Company also in its statement of objections reiterated contentions of claimants that there was no negligence in the driving of the Car insured by it and placed actionable wrong on

the driver of the goods vehicle. However, as regards the amount of compensation is concerned, it did oppose grant of the amount sought for by the claimants. Thus it is seen there is no conflict of interest between them and the claimants.

9. The owner/Insured of the goods vehicle totally denied all the petition averments and tried to place actionable wrong on the driver of the Car and assert ably canvassed that there was no negligence in the driving of the Truck Driver. It also disputed that the deceased had the income as indicated in the petition and denied the statements regarding the age, occupation and income of the deceased. It therefore placed the petitioners/claimants to strict proof of those averments.

10. The driver of the Car as also the goods vehicle have not controverted any of the petition averments. Though of course, It is apparent from the records that the first respondent-Ramesh was employed by the second respondent, M/s. Solar Auto Carriers Pvt. Ltd. (owner of the goods truck) and Thomas Antony was the employee of M/s. Arles Agro-Vet Industries Limited (owner of the car).

11. Based on the above pleadings the Tribunal formulated the following issues:

1) Whether petitioners prove that on 08-11-2001 at about 1-00PM when the deceased Manoj Kumar Bansode was returning from Bombay to Solapur, near Naigaon Village in Ambassador Car bearing No. PB-08 / N-6219 along with other two staff members, goods truck bearing No. HR-38/D-3719 driven by respondent No. 1 came in high speed from the opposite direction, in a rash and negligent manner to the wrong side and dashed to the car of the deceased Manoj Kumar and due to the impart, the deceased Manoj Kumar Bansode sustained injuries and died in the spot?

2) Whether petitioners prove that they are the legal representatives of the deceased?

3) Whether this Tribunal has Jurisdiction to entertain the petition?

4) Whether petitioners prove that they are entitled to compensation, if so, how much and from whom?

5) What order?

12. Considering the evidence tendered by the claimants ocular and documentary through PW-1 and after placing reliance on documents Exs. P1 to P9, the Tribunal answered issue Nos. 2 and 3 in the affirmative and issue Nos. 1 and 4 partly in the affirmative.

13. In the result, the Tribunal recorded a finding that the claimants had established they are the legal heirs of the deceased, Manoj Kumar and were entitled to compensation. On proved facts, it awarded Rs. 7,50,000/-to the claimant as compensation with 8% interest thereon. However, it held that there was contributory negligence on the part of drivers of both the vehicles and directed that the award be discharged by the owners and insurers of the vehicles

in equal proportion i.e., ratio of 50:50. This, has resulted in challenge by the Insurers.

14. As noted in the para supra, neither the claimants nor the owners/Insured of the respective vehicles have assailed the award. It is only the insurers of both the vehicles who have come up in these appeals. Consequently question arises as to whether the appeals filed by the insurers of the vehicles are maintainable in view the limited defence available to them under the provisions of Section 149 of the Act.

15. The learned Counsel appearing for the appellant contends that even though provision of Section 149 of the Motor Vehicles Act imposes restriction on a nature of defence available to the Insurance Company, but in the instant case the insurer had obtained permission of the Tribunal under provisions of Section 170 of the M.V. Act to resist the claim on all the grounds that were available to the owners of the vehicles in question. As the Tribunal had allowed them that right they are entitled to maintain the appeals questioning the finding of the Tribunal on all grounds that are available to the insured.

16. Both the learned Counsel in these appeals contend that once their applications filed u/s 170 of the Motor Vehicles Act are allowed by the Tribunal, they had the right to contest the claim on all grounds and thus entitled to question the finding of the Tribunal even with regard to negligence or contributory negligence. Apart from the statutory right, they have right to question the quantum of compensation. In this regard, our attention was drawn to the order passed by the Tribunal on the applications filed by respective appellants u/s 170 of the Act.

17. We have perused the records. The application filed by the United India Insurance Company, appellant in M.F.A. No. 5086/2005 was numbered as I.A. No. II and the application filed by New India Insurance Company, appellant in M.F.A. No. 5311/05 was numbered as I.A. No. III The Tribunal has considered those applications on 25.04.2004 and records as follows:

25.04.2004 Sri SSA and Sri MMB filed applications u/s 170 M.V. Act. Resp 2 & 5 and their counsel abs.-- Thus petitions filed for Ins Corps are allowed

18. Thus, the Tribunal has allowed those applications by its cryptic order which reads: "thus petitions filed for Insurance Company are allowed" no reasons are assigned. When this fact was brought to the notice of the learned appellants counsel, they contend that even though provisions of u/s 170 of Motor Vehicles Act requires that the Tribunal must pass a considered order to dispose of applications u/s 170 of the Act, such an order is not necessary if the insured/owners of the vehicles have failed to contest the proceedings. They placed reliance on the decision of the Apex Court in the case of United India Insurance Co. Ltd. Vs. Jyotsnaben Sudhirbhai Patel and Others, .

19. We shall first refer to provisions of Section 170 of the IMV Act, which reads

thus:

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 had failed to contest the claim, it may, for reason 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 claim has been made.

20. The observation of the Apex Court at para 13 is as follows:

In the instant case, the insurance company was impleaded as the respondent No. 3. The driver and owner of the vehicle, though appeared before the Tribunal, did not contest the proceedings. They did not file the written statement nor did they choose to give evidence before the Tribunal. Admittedly, appellant filed an application u/s 170 of the Act seeking permission of the Tribunal to contest the proceedings giving the necessary details. The award passed by the Tribunal also evidently shows that pursuant to this permission, the learned Counsel for the appellant insurance company cross-examined the witnesses produced by the claimant to prove the negligence of the offending vehicle. Unfortunately, however, the Tribunal, while passing its orders on the petition filed u/s 170 of the Act only stated that the prayer was granted, though the mandate of Section 170(b) of the Motor Vehicles Act states that the Tribunal while passing an order shall record its reasons. This Court in *Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another*, had emphasised this aspect. But it is very much evident in this case that the driver and the owner of the motor vehicle did not file the written statement and failed to contest the proceedings. The Tribunal could have merely recorded that fact while allowing the application. In a situation contemplated by Clause (b) of Section 170, nothing more was required than recording that indisputable fact. For failure to do so, the appellant shall not suffer prejudice. Therefore, the appellant insurance company was justified in contesting the proceedings on the grounds other than those enumerated under Sub-section (2) of Section 149 of the Act, pursuant to the permission granted by court. For the same reason, the Insurance company can be legitimately considered to be "person aggrieved" within the meaning of Section 173 of the Act.

21. In the circumstances, it is necessary to examine whether in the given facts and circumstances of this case, the cryptic order passed by the Tribunal without assigning reasons to allow the application u/s 170 of the Motor Vehicles Act entitles the appellants to contest the claim on all grounds and as to whether it permits the appellants to maintain these appeals questioning the finding of the

Tribunal on all grounds. This aspect has been considered by the Apex Court in detail in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . We would refer to this observation of the Bench for clarity. It is as follows:

For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the persons against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 is satisfied and award is adverse to the Interest of the insurer, the Insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even If the insured has not filed any appeal against the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different Interpretation to Section 172 of the 1988 Act, the same would go contrary to the scheme and object of the Act.

22. It is worth noticing that in the decision relied by the learned Counsel for the appellants rendered in the case of JYOTSNABEN SUDHIRBHAI PATEL AND ORS. the Hon"ble three Judge Bench of the Apex Court has a referred to the decision of the Apex Court in the case of Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, . The observation in Shankarayya's case at para-4 of the judgment, is as follows:

It clearly shows that the insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the insurance company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No. 1, insurance company in the claim petition but that was done with a view to thrust the statutory liability on the insurance company on account of the contract of the insurance. That was not an order of the Court itself permitting the insurance company which was

impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, It must be held that on the facts of the present case, respondent 1, insurance company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

23. It is settled principle of law that when the judicial or quasi-judicial authorities are required to pass considered order and assign reasons therefor, it is incumbent upon such authorities to assign reasons for arriving at a conclusion to grant or not to grant reliefs as sought for. On that principle order that is required to be passed on an application u/s 170 of the Act must be supported by reasons. The necessity for assigning reasons has been emphatically mandated by the Apex Court in its decision in the case of Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another, . The relevant observation is at para-4 of judgment, which reads thus:

The Tribunal has not stated the reasons in support of its conclusions. This criticism of Shri Chaudhary, counsel for the Woolcombers, appears to us to be right. As regards basic wages, the Tribunal says only this:

I am inclined to lay down the basic wages of the workmen...those who are highly skilled workmen...will get Rs. 32/- per week as their basic wages. Those who are skilled workmen...will get Rs. 28/- per week as their basic wages. Those who are semi-skilled workmen...will get Rs. 25/- per week as their basic wages....Those who are unskilled workmen will get Rs. 22.50 P. per week as their basic wages.

As regards the basic wages of other employees, the Tribunal says: "Now in the light of the enhanced pay revised by me in respect of skilled. Un-skilled, semi-skilled and highly skilled workers, I want to revise" the existing wages of clerks, drivers, durwan, sweeper, laboratory assistants and overlookers.

Such an observation has been made by the Apex Court in the case relating to fixation of minimum wages of the workmen. The Tribunal in that case was required to assign reason for fixing a particular minimum wage. The Apex Court noting that the Tribunal had not assigned any reason for fixing minimum wages and emphasizing the need for assigning reasons observed thus: (Refer para-5)

It may be observed that the first passage quoted by us states only the conclusions. It does not give the supporting reasons. The second passage quoted by us states merely one of the reasons. The other relevant reasons are not disclosed. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well known

principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi-judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time and Industry will be saved if reasons are given in support of the conclusions. So it is necessary to emphasize that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions.

24. The binding principles emanating from the dictum of the Apex Court referred to above must necessarily apply when an order on application u/s 170 of the Act is to be passed. The observations of the Apex Court in Shankaraiah's case, which we have already referred to in the para supra leaves no scope for doubt that the Tribunals while considering petition filed u/s 170 of the Act must be satisfied about existence or otherwise of the circumstances embodied under Clause (a) and (b) of Section 170 of the Act and record reasons in writing to Implead the insurer. Only if that is done then alone it is permissible for the insurer to contest the claim on all grounds, which are available to the insured against whom the claim has been made. The Tribunal must objectively assess the material placed by the insurer. In the instant case the applications IA-II & IA-III filed by the United India Insurance Company Limited and New India Insurance Company Limited, respectively, seeking permission to contest on all grounds u/s 170 of the Act is bereft of material particulars and the same has been disposed off without assigning any reason.

25. We have examined the records, it shows that the owner of the car bearing registration No. PB-08 / N-6219 has taken up defence which is totally in line with the defence taken by the insurer of the vehicle, namely, New India Assurance Company Limited. The defence of the insured and the insurer are identical and spells out no conflict of interest between them. It also does not show, even remotely, any element of collusion or favoritism towards the claimant.

26. Likewise, the statement of objections filed by the insured of the goods vehicle truck bearing registration No. HR-38 / D-3719 clearly shows that it had sought to negate the claim attributing act of negligence to the driver of the car and not to its own driver. Such a defence of the insured is similar to the defence taken by the insurer ie., United India Insurance Company Limited, of the goods vehicle. Therefore, there is absolutely no material on record to show collusion of the owners of the vehicles with the claimants. Besides, it is pertinent to mention that the insured owners have filed detailed statement of objections meeting averments in the claim petition and they have resisted the claim petition. They have therefore, not failed to contest the claim.

27. The word "contest" has not been defined in the Act and therefore, we have to fall back to the Dictionary meaning in Black's Law Dictionary. The word "contest" is defined as follows:

contest - 1. To strive to win or hold; content [he chose to contest for the prize]. 2. To litigate or call into question; challenge [they want to contest the will]. 3. To deny an adverse claim or assert a defense to it in a court proceeding [she contests that charge].

28. This would show when a person resists the claim, files written statement or does not admit the claim and puts the claimants to strict proof of their contention, it amounts to contest. In the instant case, as noted above, as the owners have contested the claim by filing the written statement, the ground enumerated in Clause (b) of Section 170 of the Act, was not available. Likewise, as the insured-owners have resisted the claim and their defence is in line with the objections raised by the insurers, there is no element of collusion between them and the claimants manifesting from their conduct. Therefore, circumstances enumerated in Clause (a) of Section 170 of the Act, are non-existent. For this reason the Tribunal could not have impleaded respective Insurance companies (appellants) or permitted them to contest the claim on all grounds which are available to the owners. The Tribunal cannot lightly enlarge, the restricted defence available to the insurers u/s 149 of the Act.

29. Therefore, we find that in the instant case even though the Tribunal is said to have allowed the applications - IA-II and IA-III filed by the appellants by an order dated 27-05-2004, as that order has been passed without considering the existence or otherwise of the circumstances embodied under Clause (a) and (b) of Section 170 of the Act and as no reasons are assigned to enlarge the limited statutory defence available to the insurance companies, it is not an order in law. Thus insurance companies have only a limited, restricted statutory defence available to them and consequently, have no right to appeal against the said judgment and award as held by the Apex Court in NICOLLITAS case referred to above. Therefore, the appeals filed by the insurers are incompetent and are not maintainable.

30. Before parting from this point it is necessary to observe that invariably Motor Accident Claims Tribunals are ignoring the requirement of passing considered orders under the provisions of Section 170 of the Act and such applications are disposed of by cryptic orders without taking into consideration existence or otherwise the circumstances enumerated under Clause (a) and (b) of the said provisions. There is, therefore, a need to sensitize the Tribunal on this point and to impress upon the Tribunal to objectively assess the grounds urged in such application and to dispose of such applications purely on merits assigning reasons, keeping in mind the serious consequence that flow from such order as observed by the Apex Court in the case of Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, and National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, .

31. Based on the discussions above, it is held that the statutory embargo on the right of appeal operates and consequently the appeals filed by the insurers-appellants u/s 173 of the Act are not maintainable. The appeals must fall on this ground alone.

32. However, we also heard the learned Counsel on merits. The contention of the learned Counsel is that the Tribunal erroneously accepted the contention of the claimants that the deceased Manoj Kumar had an income in a sum of Rs. 1,15,830/- per annum. According to them, allowances which the deceased was drawing would not form part of his salary and therefore, that component had to be deducted. If that was done then the income of the deceased would not be more than Rs. 3,000/- per month and 50% deduction. If his contribution is at Rs. 1,500/- PM to the family, annually it will be Rs. 18,000/- and on that basis the claim should have been allowed.

33. We have examined the evidence on record and reasoning of the learned Tribunal. Admittedly, the appellants have not disputed the salary certificate at Ex.P9 issued by the employer, who is also respondent No. 4 in the petition.

34. Based on the evidence led before it and proved facts the Tribunal has assigned reasons for quantifying the annual income of the deceased at Rs. 86,000/-. It has chosen 13 as multiplier and quantified the amount at Rs. 14,62,000/-. There is a mathematical error in such calculation. It has been subjected to 50% deductions and reached figure of Rs. 7,31,000/-. However, again the Tribunal has calculated the amount correctly and arrived at a figure of Rs. 11,18,000/-. It has on re-calculation subjected it to 1/3rd deductions and fixed the loss of dependency at Rs. 7,42,000/- Instead of Rs. 7,45,335/-. Be it as it may, the loss of dependency fixed by the Tribunal is based on the salary certificate Ex.P9 issued by the employer, which is not disputed. In all, the Tribunal has awarded Rs. 7,42,000/- towards loss of dependency, which actually is on the lower side as the Tribunal has not taken into consideration the career progression. Besides, it is noticed that under conventional heads the Tribunal has not awarded any amount towards loss of estate, funeral expenses, loss of love and affection to the parents, etc. It has awarded a meagre sum of Rs. 8,000/- and thus awarded global compensation of Rs. 7,50,000/-. Such an award is certainly inadequate taking into consideration the factual situation. However, as the claimants are not in appeal against such an award, we refrain from modifying it though the claimants would have been entitled to higher compensation.

35. In the circumstances, we do not find any justifiable reason to interfere with the said judgment and award, which has been accepted by the insured-owner against whom the claim was allowed. As the appellants have not raised any grounds, which is permissible to them u/s 149 of the Act, but are seeking to set aside the award on larger defence which are not available to it, the appeals are incompetent and are therefore, liable to be dismissed.

36. In the result, the appeals stand dismissed confirming the Judgment and

award impunged.

Office is directed to transmit the statutory deposit amount to the concerned Tribunal for disbursement.

It was urged on behalf of the claimants that the Tribunal has directed the entire compensation awarded to be deposited in fixed deposits. A request is made to direct the Tribunal to permit the claimants to withdraw some amount. Having considered the said prayer, we permit the claimants 1 and 2 to withdraw together a sum of Rs. 1,50,000/- out of the amount to be apportioned in their favour and retain balance amount in fixed deposit as directed by the Tribunal.

In the circumstances no order as to costs.