(2011) 12 AHC CK 0150

In the Allahabad High Court

Case No : Civil Miscellaneous Stay Application No. 351582 of 2011 in First Appeal From Order No. 3917 of 2011

The New India Assurance Co. Ltd. APPELLANT

Vs

Devendra Kumar And Others RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 170

Citation : (2011) 12 AHC CK 0150

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Sanjay Misra, J.—Sri V.C. Dixit, learned counsel for the appellant has placed reliance on a decision of the Supreme Court in the case of United India Insurance Co. Ltd.Vs. Shila Datta & ORs. , passed in Civil Appeal Nos. 6026-6027 of 2007 dated 13.10.2011 and refers to Point No. 1, decided by the Supreme Court. According to him, where the claimant impleads the insurer as respondent in the Claim Petition, the Insurance Company would have all rights of defence even apart from those u/s 149(2) of the Motor Vehicles Act, even if the permission u/s 170 of the Act is not obtained by the Insurance Company. For the said submission he has placed reliance on paragraph 10 & 11 of the aforesaid judgment. Paragraph 10 & 11 are quoted hereunder:-

10. Section 170 of the Act does not contemplate an insurer making an application for impleadment. Nor does it contemplate the insurer, if he is already impleaded as a party respondent by the claimants, making any application seeking permission to contest the matter on merits. Section 170 proceeds on the assumption that a claim petition is filed by the claimants, or is registered suo moto by the tribunal, with only the owner and driver of the vehicle as the respondents. It also proceeds on the basis that in such a proceeding, a statutory notice would have been issued by the tribunal to the insurer so that the insurer

may know about its future liability in the claim petition and also resist the claim, on any of the grounds mentioned in section 149(2). Section 170 of the Act also assumes that the tribunal will hold an inquiry into the claim, where only the claimants and the owner and driver will be the parties. Section 170 provides that if during the course of such inquiry, the tribunal finds and satisfies itself that there is any collusion between the claimant and the owner/driver or where the owner/driver has failed to contest the claim, the tribunal may suo moto, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of the claim, who was till then only a notice, shall be treated as a party to the proceedings. The insurer so impleaded, without prejudice to the provisions of section 149(2), will have the right to contest the claim on all or any of the grounds that are available to the driver/owner.

11. Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the tribunal u/s 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available u/s 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party. When a statutory notice is issued u/s 149(2) by the tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can however be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal u/s 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim.

2. He has also placed reliance on a decision of the Supreme Court in the case of National Insurance Company Ltd., Vs. Parvathneni & Another reported in 2009 (4) TAC 382 (S.C.) to submit that the matter has been referred to a larger bench in the Supreme Court as to whether when no liability has been found against the Insurance Company yet it can be compelled to pay the compensation to the claimant and recover it from the person who is liable to pay the amount.

3. Learned counsel states that in the present case the appellant-Insurance Company was impleaded as a respondent by the claimants before the Tribunal and, therefore, it is open for it to challenge the impugned award on all grounds and cannot be confined to the grounds mentioned in Section 149(2) of the Motor Vehicles Act.

4. In view of the aforesaid circumstances, in case the appellant deposits the entire amount awarded by the Tribunal before the Motor Accident Claims Tribunal, within a period of two months from today as awarded by the impugned award dated 09.08.2011 passed in Motor Accident Claims Petition No. 164 of

2009 (Irshad Ahmad Vs. Bhupendra Singh & Others) by the District Judge, Motor Accident Claims Tribunal, Bijnor, the same shall be kept in an interest bearing account of a Nationalized Bank and the appellant-Insurance Company will be entitled to execute the award for the purpose of recovery. The statutory amount deposited by the Insurance Company be remitted to the Tribunal to be given due adjustment. The amount so deposited shall not be released until further order of this Court.

5. Admit.

6. Issue notice by registered post A.D. fixing an early date.

7. Steps be taken by registered post A.D. within two weeks.