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**(2008) 01 MP CK 0034**  
**In the Madhya Pradesh High Court**

The New India Assurance Co. Ltd.

APPELLANT

Vs

Suresh Chand Sankla and Others

RESPONDENT

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**Date of Decision :** 31-01-2008

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149, 170, 173, 20

**Citation :** (2008) ILR (MP) 863 : (2008) 2 MPHT 430

**Hon'ble Judges :** N.K. Mody, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

N.K. Mody, J.—Being aggrieved by the award dated 3-1-2004 passed by Member, MACT Neemuch, in Claim Case No. 132/02 whereby claim case tiled by respondent No. 1 on account of injuries sustained by him in a motor accident was allowed and a sum of Rs. 2,02,500/- was awarded alongwith interest @ 9 % per annum, the present appeal has been filed.

2. Short facts of the case are that respondent No. 1 filed a claim petition alleging that on 17-4-2002 respondent No. 1 was travelling in a Matador which was owned by respondent No. 2 and insured with appellant. It was alleged that owner of the offending vehicle who is the respondent No. 2 himself was driving the vehicle which met with an accident because of rash and negligent driving in which respondent No. 1 sustained injuires. In the claim case it was alleged that because of injuries there is a permanent disability for which respondent No. 2 and appellants are liable for payment of compensation. The claim case was contested by respondent No. 2 as well alongwith the appellant.

3. After framing of issues and recording of evidence learned Tribunal allowed the claim case filed by respondent No. 1 and awarded a sum of Rs. 2,02,500/- break up of which is as under:

Towards permanent disability Rs. 1,00,000/- Towards medical expenses Rs. 50,000/- Towards loss of income Rs. 50,000/- Towards pain and suffering Rs.

2,500/- ----- Total Rs. 2,02,500/- -----

4. Learned Counsel for the appellant submits that the amount awarded is exorbitantly on higher side. Learned Counsel further submits that learned Tribunal committed error in refusing the permission u/s 170 of the Motor Vehicles Act by order dated 13-11-03 whereby the application filed by appellant u/s 170 of the Act was dismissed. Learned Counsel submits that respondent No. 2 submitted written statement and owner also submitted affidavit in evidence but thereafter did not appear for cross-examination. It is submitted that in spite of order passed by the learned Tribunal for calling respondent No. 2 by issuance of warrant, respondent No. 2 did not appear. It is submitted that in the facts and circumstances of the case, appellant ought to have been given an opportunity to defend the case on quantum. It is submitted that whether the permission was wrongly been refused by the learned Tribunal can always be examined, in an appeal filed before this Court and appellant Insurance Company can always challenge the award on quantum. For this contention reliance is placed on a decision reported in *United India Insurance Co. Ltd. Vs. Jyotsnaben Sudhirbhai Patel and Others*, , wherein in a case where the driver and owner failed to contest the proceedings and Insurance Company sought permission u/s 170 of the Act to contest proceeding was allowed by the learned Tribunal by passing a cryptic order stating prayer granted but did not record reasons and awarded compensation and in appeal filed by Insurance Company on grounds other than enumerated u/s 149(2) of the Act dismissed by High Court as not maintainable, because order of the Tribunal was not a reasoned order, the Hon"ble Apex Court held that Insurance Company should not suffer prejudice simply by the fact that Tribunal had not recorded the reasons. It was further held that Insurance Company was justified in contesting the proceeding before the Tribunal on the ground other than those enumerated u/s 149(2) of the Act as permitted by it. It was further argued that Insurance Company can be legitimately considered as "person aggrieved" within the meaning of Section 173 and remanded the case to the High Court for hearing and disposal on merits.

5. Reliance was further placed on a decision of Division Bench of this Court in the matter of *Oriental Insurance Co. Ltd. Vs. Manisha Chaturvedi and Others*, , wherein owner and driver proceeded ex parte and Tribunal rejected the prayer of Insurance Company for order u/s 170 of the Act without justification and without assigning any reason, it was held that the appeal filed by the Insurance Company challenging the quantum of compensation is maintainable. Reliance was also placed on a decision of Karnataka High Court in the matter of *New India Assurance Company Limited and Another Vs. Shankar and Another*, , wherein in a case where condition incorporated in policy reserving right of insurer to raise defence available to insured, was held that appeal filed by insurer is maintainable even in absence of permission u/s 170.

6. Reliance was also placed on a decision of Andhra Pradesh High Court in the matter of *Md. Rasheed Vs. Susheela Agarwal and The Regional Manager, National*

Insurance Company, , wherein Insurance Company had not taken permission of the Tribunal u/s 170 in appeal an objection was raised to the effect that Insurance Company should confine itself to the defence open to it u/s 149(2) and it cannot challenge the finding on negligence, it was held that since Appellate Court found that findings of Tribunal regarding negligence without any supporting evidence on record, therefore Appellate Court can interfere with the finding on negligence.

7. Reliance was also placed on the decision of United India Insurance Company Limited Vs. Gorla Bondamma and Others, , wherein Insurance Company pleaded that insured is not contesting the claim effectively and seriously before the Tribunal and sought permission to contest it on all grounds, it was held that claimants have no say in a petition u/s 170. It was further held that claimants opposing the petition prima facie is a ground to presume collusion between insured and claimants. It was further held that the Tribunal was not justified in refusing to grant permission to Insurance Company u/s 170.

8. In the matter of Oriental Insurance Company v. Diva Shankar Rai @ Pappu IV 2007 ACC 208 Patna High Court held that in exceptional cases Appellate Court can interfere in judgment of Tribunal when Tribunal has applied wrong principle of law or has awarded excessive award of compensation.

9. Reliance was also placed on a decision of Kerala High Court in the matter of Oriental Insurance Co. Ltd. Vs. Narayanan Nair, , wherein application was filed u/s 170 before the Tribunal but no order was passed by the Tribunal on the said application and also the Insurance Company was also allowed to cross-examine the claimant on disputed facts and Insurance Company filed the appeal it was held that omission to pass a specific order will not be fatal and the Insurance Company's right of appeal dangles on the decision of the Tribunal on the application u/s 170 and the case was remanded to the Tribunal for disposing the application u/s 170.

10. Learned Counsel for appellant submits that since respondent No. 2 was not possessing valid driving licence therefore, right of recovery ought to have given to appellant.

11. Reliance was placed on a decision in the matter of National Insurance Co. Ltd. Vs. Kusum Rai and Others, , wherein the Hon''ble Supreme Court in a case where the driver had licence to drive light motor vehicle but he was driving a jeep which was being plied as a taxi, a commercial vehicle, it was held that driver did not possess a valid licence to drive a commercial vehicle; Insurance Company may recover the amount paid from the owner by initiating proceedings before the Executing Court.

12. So far as quantum is concerned, learned Counsel submits that permanent disability was 10% as per medical certificate but it is not clear from the evidence that 10% permanent disability was of the whole body or of a particular limb. In the circumstances, award of Rs. 1 lac on account of permanent disability is on

higher side. Learned Counsel further submits that on account of medical expenses respondent No. 1 has submitted bills of Rs. 22168/- which are Exhs. P-17 to P-36, while learned Tribunal awarded Rs. 50,000/- which is excessive. Learned Counsel further submits that on account of loss of income learned Tribunal awarded the amounts of Rs. 50,000/- which is on higher side.

13. Mr. Sameer Aathwale, learned Counsel for respondent No. 1 submits that so far as right of recovery is concerned, it is not the case of the appellant that respondent No. 2 was not having endorsement to drive transport vehicle. It is submitted that in the facts and circumstances of the case learned Tribunal has rightly held appellant liable for payment of compensation. Learned Counsel submits that appellant has not adduced any evidence to prove that respondent No. 2 was not possessing any driving licence. Learned Counsel for respondent No. 1 submits that appeal itself is not maintainable. It is submitted that application u/s 170 of the Motor Vehicles Act, was filed by appellant on 30th September, 2003, while claim petition was filed by respondent No. 1 on 9-11-02 and written statment was filed by appellant on 14-2-2003. Learned Counsel submits that application was filed by appellant at the fag end of the trial on 30th September, 03, which was dismissed by learned Tribunal vide order dated 13-11-03. Learned Counsel submits that since no permission was granted to the appellant, therefore, appellant is not entitled to challenge the quantum.

14. For this contention reliance is placed on a decision of this Court in the matter of United India Insurance Co. Ltd. Vs. Kamla Raghuvanshi and Others, , wherein a Division Bench of this Court has held as under:

In case where Insurance Company sought permission of the Tribunal u/s 170, which was refused by the Tribunal, the Insurance Company filed appeal challenging quantum of compensation awarded and prayed that permission u/s 170 may also be granted. It was held that Appellate Court cannot grant permission u/s 170 of the Act.

15. Learned Counsel further submits that u/s 173 of the Act appeal can be filed only by the aggrieved persons against award subject to Provision of Sub-section 20 of the Act. For this contention reliance is placed on a decision of this Court in the matter of New India Insurance Company Ltd. v. Smt. Rafeeka Sultana reported in 2001 MP 116, wherein this Court has held as under:

Section 173 has to be read alongwith 149(2) and 170. Their operation is not confined to trial stage. It continues and in case, the insurer has obtained order from the Claims Tribunal at the trial stage, only then he can assail the award on all available grounds before the Appellate Court otherwise limited defences u/s 149(2) are available to it. Reading of Section 173 with other two provisions would demonstrate that "any person aggrieved by an award" is not same thing as "person interested". Former has restricted meaning than the later. The claimant can be aggrieved by the award, if it is less or his claim petition is rejected. The insurer, insured and driver may be aggrieved where claim is

allowed and responsibility fixed for payment of compensation. But they can appeal after satisfying the conditions mentioned in Section 173 of the Act and in case of Insurance Company, further restriction is that it cannot challenge the award except on grounds mentioned in Section 149(2) of the Act unless reasoned order from the Claims Tribunal for taking up other defences is obtained during the trial stage.

16. As per Section 170 of the Motor Vehicles Act, the Claims Tribunal has to satisfy and grant permission to the insurer if there is collusion between the claimant and against whom the claim is made or the person against whom the claim is made has failed to contest the claim. It is also the duty of the learned Tribunal to pass a reasoned order.

17. In the present case, claim petition was filed on 9-11-2002 and final award was passed on 3-1-2004, i.e., within a period of 14 months. Written statement was filed by the appellant on 14-2-2003 and the application u/s 170 of the Motor Vehicles Act was filed on 30-9-2003. Since respondent No. 2 who was also driving at the relevant time did not appear for cross-examination in spite of filing the affidavit and also did not appear in spite of issuance of warrant, there was no justification on the part of the learned Tribunal to dismiss the application filed by the appellant u/s 170 of the Motor Vehicles Act on 13-11-2003. Since final award was passed within an period of six weeks of passing of the order dated 13-11-2003, therefore, the appellant was within its right to challenge the order dated 13-11-2003 in appeal whereby the permission was refused. Keeping in view the law laid down in the matter of *United India v. Jyotsnaben* (supra), appellant Insurance Company cannot be allowed to suffer prejudicial simply because of the fact that the Tribunal has refused the permission without assigning any cogent reason.

18. Thus, this appeal stands allowed. Impugned award as also the order dated 13-11-2003 whereby application filed by the appellant u/s 170 of the Motor Vehicles Act was dismissed and the case is remanded back to the learned Tribunal to allow the appellant Insurance Company to defend the case on all the grounds, which are available to the owner and driver and, after recording of the evidence, if any, decide the claim petition afresh. Parties are directed to remain present before the learned Tribunal on 20th February, 2008.