
(2008) 09 AHC CK 0205
In the Allahabad High Court

The New India Assurance Company Limited

APPELLANT

Vs

Smt. Padma Devi and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Motor Vehicles Act, 1988 — Section 149, 170

Citation : (2009) ACJ 2196 : (2009) 1 AWC 340

Hon'ble Judges : Shishir Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—All the aforesaid appeals have been analogously heard on the common cause.

2. The common cause is that when the claim petitions are being disposed of by the tribunals keeping the application u/s 170 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") pending due to oversight or inadvertent mistake, whether the same will be construed as implied permission by the tribunal to file insurance companies to prefer the appeal or not.

3. It is pertinent to mention here that in 2008 (1) T.A.C. 266 (New India Assurance Co. Ltd. v. Dr. Prem Singh Bhadauria and Anr.) this Bench has decided the issue by holding a view that no one can be allowed to draw any favourable inference by saying that there is an implied permission in such circumstances. No application either interim or interlocutory or miscellaneous in nature can be treated to be pending when the main cause by way of suit or proceeding is disposed off wither way. Non-recording of any such order in any of such applications is a bona fide mistake. No chance can be said to be available for such alleged pendency. In other words, pendency can be couched both ways. It can be said to be implied permission or implied rejection. According to us, when an affirmative order is passed ignoring or refusing insurance companies" plea particularly in absence of statutory defence u/s 149(2) of the Act, implied

permission could not have been couched.

4. According to us, the appeal is a creature of statute. Therefore, unless statute prescribes to prefer the appeal, an insurer, as a matter of course, can not prefer the appeal. Insurers have limited independent right to prefer the appeal provided there is a clear violation of Section 149(2) of the Act. Even mere raising of such points before the tribunal will not suffice. But at the same time insurance companies are not remediless as discussed hereunder.

5. It is to be remembered that an insurer, either running as a public or private company is made to help the people under a beneficial piece of legislation and in the process makes profit out of business but not other way round. If the Court starts encouraging the causes of insurers, the mission of creation of statute to give equitable relief to the ultimate sufferer will be frustrated. Therefore, law can not be read in the manner other than it is written.

6. In *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, we find the similar ratio in paragraph Nos. 27, 28 and 29 which are quoted hereunder:

27. This matter may be examined from another angle. The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premise that the insured or the persons against whom a claim has been made has not filed any appeal. Section 149(2) of 1988 Act limits the insurer's appeal on those enumerated grounds and the appeal being a product of the statute, it is not open to an insurer to take any other plea other than those provided in Section 149(2) of 1988 Act. The view taken in *United India Insurance Co. Ltd. v. Bhushan Sachdeva*, (supra) that a right to contest would also include the right to file an appeal is contrary to well established law that creation of a right to appeal is an act which requires legislative authority and no Court or tribunal can confer such right, it being one of limitation or extension of jurisdiction. Further, the view taken in *United India Insurance* (supra) that since the insurance companies are nationalised and are dealing with public money/fund and to deny them the right of appeal when there is a collusion between the claimants and the insured would mean draining out or abuse of public fund is contrary to the object and intention of the Parliament behind enacting Chapter XI of 1988 Act. The main object of enacting Chapter XI of 1988 Act was to protect the interest of the victims of motor vehicle accidents and it is for that reason the insurance of all motor vehicles has been made statutorily compulsory. Compulsory insurance of motor vehicle was not to promote the business interest of insurer engaged in the business of insurance. Provisions embodied either in 1939 or 1988 Act have been purposely enacted to protect the interest of travelling public or those using road from the risk attendant upon the user of motor vehicles on the roads. If law would have provided for compensation to dependants of victims of motor vehicle accident, that would not have been sufficient unless there is a guarantee that compensation awarded to

an injured or dependant of the victims of motor accident shall be recoverable from person held liable for the consequences of the accident. In *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, it was observed thus:

In other words, the legislature has insisted and make it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of premise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the light of the aforesaid perspective.

28. We have noticed the legislative development in regard to third party rights in England and found that the object of those legislations was to protect the interest of third party rights. The 1939 Act as well as 1988 Act both were enacted on pattern of English statute with the object to relieve the distress and miseries of victims of accidents and reduce the profitability of the insurer in regard to occupational hazard undertaken by them by way of business activities and not to promote business interests of insurance companies even though they may be nationalised companies.

29. For the aforesaid reasons, as well as that the learned Judges in *United India Insurance Co. Ltd. (supra)* have failed to notice the limited grounds available to an insurer u/s 149(2) of the Act, we are of the view that the decision in *United India Insurance (supra)* does not lay down the correct view of law.

(Emphasis supplied)

7. We have repeatedly followed this well discussed judgment. In such judgment a further question arose with regard to fraud which is not relevant herein. However, it is well known that fraud and nullity can be raised at any time by any of the parties even in the collateral proceedings.

8. The issue before us is different. According to the appellants, when as per the ratio of *United India Insurance Co. Ltd. Vs. Jyotsnaben Sudhirbhai Patel and Others*, a reasoned order is required to be passed, even non-passing of any order by the learned Judge is illegal or not. Therefore, the question arose about the reading of Section 170 of the Act which is as follows:

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 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 the claim has been made.

9. Most of the insurers have made a grievance before the Court that since the applications are undisposed of, it is far to say that those applications are backed by any reason. However, we have already directed the subordinate courts to pass reasoned order, in a judgment reported in 2008 (3) ADJ 572 (United India Insurance Co. Ltd. v. Krishna Kumar and Ors.). Hence, the next question arose what is the basic difference between the order passed by this Court in Dr. Prem Singh Bhadauria (Supra) and hereunder. Paragraph 11 of the said judgment, being relevant for the purpose, is quoted hereunder:

11. In United India Insurance Co. Ltd. v. Jyotsaben Sudhirbhai Patel and Ors. AIR 2003 SC 131 : 2003 (3) TAC 277 , the Supreme Court observed that it is now a settled position that an insurer can contest the proceeding before the Motor Accidents Claims Tribunal only on any of the grounds prescribed u/s 149(2) and unless specific order is passed by the Tribunal u/s 170, the insurer can not contest the claim on the grounds other than the grounds mentioned in Sub-section (2) of Section 149 of the Act. Interestingly in that case although a cryptic order was passed by the Tribunal "granted as prayed for" but the Supreme Court observed that it not sufficient. The Tribunal should give reasons while passing such orders as per the provisions of such Section. It has been further observed by the Supreme Court that when the driver and the owner did not file the written statement and failed to contest the proceeding the Tribunal could have recorded such fact while allowing the application. However, ultimately Supreme Court held that the appeal should not be dismissed only on the sole ground that the appellant had obtained a reasoned order permitting it to contest u/s 170 of the Act. From the observations of the Supreme Court, it is crystal clear, as aforesaid, that even non-reasoning in the order might have been fatal therefore it is far to say that when no order is passed the same will also be considered as permission.

10. According to us, there is no basic difference of situation between the case of Dr. Prem Singh Bhadauria (Supra) and herein. Necessity of passing reasoned order was neither overlooked in such judgment nor hereunder.

11. According to us, giving reasons or no reasons are different from the question of implied permission when an application is not disposed of. It is actually the question of survival of the application after disposal of the main cause thereby impermissible in law.

12. The ratio of Nicolletta Rohtagai (Supra) was again followed by a three Judges' Bench of the Supreme Court in the judgment reported in Sadhana Lodh

Vs. National Insurance Company Ltd. and Another, There also it was held that right of appeal is a statutory right and when law provides remedy by way of appeal on limited ground, the same will be done for the said purpose and not for any other purpose. The judgment is categorical that limited purpose is only with regard to those provided u/s 149(2) of the Act.

13. Let us consider what is the status of insurer and whether any remedy is available to them or not. According to us, the insurance company is no more than an indemnifier of the owner when the owner is vicariously liable for causing the accident through the driver who is actually responsible. However, in effect, owner appears to be primarily liable because of the social status of the drivers in our country. But insurer can not avoid liability as indemnifier as a matter of course. In any event, in giving answer about remedy we make it clear that on being refused to get an order by the insurer u/s 170 of the Act an application can be made to the High Court under Article 227 of the Constitution of India for revision. Even if the final order is passed it can make an application for rectification or recovery in the selfsame proceeding whereunder virtually a case is being reopened excepting the cause of the claimants.

14. Therefore, an insurer is not remediless. Moreover, in a claim petition two contesting parties are there i.e. the claimant/s in one side and the driver, owner and/or insurance company on the other side. This contest is to be resolved by a tribunal in a summary manner. Inter-se dispute between the insurance company in one hand and others in other hand is incidental in nature. This is one other ground not to interfere with such order in appeal by the High Court. Basically an irregular order is always revisable when illegal order is always appealable. Thereby the order of rejection u/s 170 of the Act is always revisable in nature.

15. Out of the cases under this judgment only in F.A.F.O. No. 2149 of 2008 issue of validity of driving licence was questioned but the appellant-insurance company did not press it. So far as F.A.F.O. No. 973 of 2008 is concerned, only question of violation of the terms and conditions of insurance policy was made. In accepting such contentions the tribunal was pleased to direct the insurance company of the jeep to pay the awarded amount as stop gap arrangement and liberty has been granted to recover the same from the owner of the vehicle. Therefore, the insurance company has not been fastened with the liability.

16. Coming back to the basic issue whether there is any difference of law in between the position when the application of such nature was rejected or no order was passed and whether it has passed with reasons other way pursuant to the judgment of Jyotsnaben Sudhirbhai Patel (Supra) followed by the judgment of Krishna Kumar (Supra) we are of the view that there is no basic difference. It is desirable that the application should be disposed of with reasons but it is undesirable to hold that any irregularity of not passing any order in either way due to oversight or inadvertent mistake can be construed as a ground of appeal when the right of the insurance company is limited. Therefore, we reaffirm the judgment of Dr. Prem Singh Bhadauria (Supra) hereunder.

17. Accordingly, the appeals are dismissed upon holding that no implied permission can be construed to prefer appeal due to pendency of such application inadvertently. No order is passed as to costs.

18. So far as recovery is concerned, it is open to the insurance company to make appropriate application before the tribunal concerned wherein upon giving notice and opportunity of hearing the same will be decided in the self same proceeding but without stalling any payment to be made to the claimants.

19. Since F.A.F.O. No. 728 of 2008 has been dismissed on the aforesaid point,. the Cross Objection No. 78170 of 2008 filed by the claimant for enhancement of awarded amount can not be held sustainable and accordingly the same is also dismissed without cost keeping his right of grievance open to agitate before the tribunal, if so advised.

20. Incidentally, the appellant-insurance company prayed that the statutory deposit of Rs. 25,000/- made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.