

(2003) 11 PAT CK 0074

In the Patna High Court

Case No : M.A. Nos. 279, 281 and 286 of 1999 with M.A. No. 313 of 2002

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Kameshwar Shah and Others

RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Citation : (2003) 11 PAT CK 0074

Judgement

Nagendra Rai, J.—All the four appeals have been filed by the Oriental Insurance Company and its officers challenging the judgment and award passed by the Motor Vehicles Claims Tribunals (hereinafter referred to as the Tribunal) allowing the claims under the Motor Vehicles Act (hereinafter referred to as the Act) with regard to motor vehicles accident. In all the appeals the challenge is to the quantum of compensation allowed by the Tribunals.

2. Misc. Appeal No. 286 of 1999 has been directed against the judgment dated 28th November, 1998 passed by the Tribunal Rohatas at Sasaram in Claim Case No. 122 of 1996 allowing the compensation of Rs. 1,54,000/- with interest at the rate of 12% from the date of filing the application till the realisation jointly by the owner and the appellant Insurance Company. The said claim case was filed by the father with regard to death of his son Dhanjay in a motor vehicle accident by Motor Vehicle No. BRC 6685 (Bus) on 16-10-1995. It is asserted that the deceased died because of rash and negligent driving of the said bus. The owner appeared and filed a written statement but did not contest the matter. The appellant-Insurance Company contested the matter and thereafter, the Tribunal allowed the compensation as stated above.

3. Misc. Appeal No. 281 of 1999 has been filed against the judgment dated 23-4-1999 passed by the Tribunal at Patna in Claim Case No. 98 of 1994 filed by the widow Chandra Kala Devi for the death of her husband in motor vehicle accident on 12-7-1994 by bus bearing No. B.R. 06 P 5551. The allegation was that while the deceased Pradeep Kumar was loading xerox machine in the dicky of a bus at Harding Park Bus Stand, the driver of the said bus dashed against the

deceased as a result of which he died in Patna Medical College and Hospital, Patna. The owner and the driver filed the written statement and contested the claim. The appellant-Insurance Company also denied the claim. The Tribunal therefore, having considered the matter that the bus was insured with the appellant-Insurance Company and after consideration of the materials on record directed the appellant-Company to pay the compensation of Rs. 2,55,334/- with interest at the rate of 12 per cent per annum from the date of filing of the application till realisation.

4. Misc. Appeal No. 279 of 1999 has been filed against the judgment and award passed by the Tribunal, Saran in Claim Case No. 46 of 1997. One Harendra Mahdo died due to accident caused by motor vehicle (bus) bearing No. BR-20C-7006 on 22-3-1996 at 7.10 a.m. while he was getting alighted from the tracker. The owner as well as the appellant-Insurance Company appeared. The Tribunal after having found that the vehicle was validly insured with the appellant-Insurance Company awarded the compensation of 1,75,128/- against the appellant-Insurance Company together with interest at the rate of 12% per annum from the date of filing of the application till realisation.

5. Misc. Appeal No. 33 of 2000 has been filed against the judgment and award dated 23-2-2000 passed by the Tribunal, Nawada in Claim Case No. 25 of 1998. In this case, the deceased is one Md. Nooruddin and the claim case was filed by his widow and his minor children. He died due to rash and negligent driving of a bus bearing No. B.R. 2-A-7305 which dashed against the trecker which was being driven by him. The said bus was insured by the Oriental Insurance Company Ltd. and the trecker was insured by the National Insurance Company Ltd. Both the Insurance Companies appeared and contested the matter and the Tribunal after consideration of the matter awarded compensation of Rs. 2,42,000/- together with interest at the rate of 12% per annum from the, date of application till the date of realisation.

6. In all the four appeals, the appellant Insurance Company has challenged the quantum of compensation on the ground that the Tribunal has not adopted correct principle for determining the amount of compensation.

7. Learned Counsel appearing for the claimants - respondents raised a preliminary objection regarding the maintainability of the appeal. It was stated on their behalf that the appellant - Insurance Company can raise a defence only u/s 149(2) of the Act and cannot challenge the award and quantum of compensation on merit without fulfilling the conditions as prescribed u/s 170 of the Act.

8. In Misc. Appeal No. 286 of 1999 the learned single Judge by order dated 26-7-2001 referred the matter to Division Bench for an authoritative pronouncement and that is how the matter has been placed before us. The other three appeals were also ordered to be heard by a Division Bench on the same ground. It is to be stated here that so far Misc. Appeal No. 281 of 1999 is

concerned, the maintainability matter of this appeal was decided by another learned single Judge on 19-9-2000 and he held that the appeal is maintainable if while fixing the quantum of compensation the Tribunal has committed error on the very principle itself. The learned single Judge before which the matter was placed for admission by order dated 6-8-2001 ordered that the maintainability matter be considered again in view of the reference of the matter before the Division Bench by order dated 26-7-2001 in Misc. Appeal No. 286 of 1999.

9. The only question for consideration is as to whether the appeal at the instance of the Insurance Company challenging the quantum of compensation is maintainable u/s 173 of the Act.

10. From the conjoint reading of Sections 147, 149 and 170 of the Act it is clear that the statutory defences available to the insurer, in case the vehicle in question is covered by certificate of insurance, are only those defences which are provided under Sub-section (2) of Section 149 of the Act and appeal can be confined or limited to those grounds as mentioned in the aforesaid section. However, if during any inquiry, the Tribunal finds that there is collusion between the claimant and the insured or the person against whom the claim has been made or the insured does not contest the claim then the Tribunal can add the insurer as a party and on such impleadment the insurer has all defences which would be available to the owner or against whom the claim has been made. However, before impleading the insurer the Tribunal has to record reasons in writing.

11. Thus, on fulfilment of the two conditions as mentioned u/s 170 of the Act, the order of the Tribunal is necessary or the Tribunal has to give order in writing for impleading the insurer and once the insurer is impleaded then he can take all the defences available to the insured or the person against whom the claim has been made. The insurer cannot take any other defence except those provided u/s 149(2) of the Act. In a case where Section 170 is not attracted, the insurer cannot challenge the quantum of compensation as well as the findings with regard to negligence or contributory negligence of the offending vehicle. If the requirement of Section 170 of the Act is not fulfilled, the insurer cannot file an appeal except those confined to the grounds as mentioned u/s 149(2) of the Act.

12. The question involved in these appeals is no longer res Integra as it has been decided by a bench of three Judges of the apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . The matter was referred to a Larger Bench in view of the contrary views of the Benches of two Hon"ble Judges of the Supreme Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, and in the case of United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others, . The apex Court having considered the English Law as well as the provisions of 1939 Act as well as the present Act held that the insurer has only defences in a claim case which are provided u/s 149(2) of the Act. In paragraph 16 of the judgment held as follows:

"For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in Sub-section (2) of Section 149 of the 1988 Act and not more and for that reason if an insurer is to file, an appeal, the challenge in the appeal would confine to only those grounds."

13. It was further held that unless the conditions as provided u/s 170 of the Act are fulfilled and written permission is granted to the insurer by the Tribunal, the insurer has no defence except as provided u/s 149(2) of the Act. Once a permission has been granted by the Tribunal to the insurer to be impleaded by order stating the reasons he can take the other defences which has been available to the insured or the person against whom the claim has been made and he can file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if no appeal has been filed by the insured or by the person against whom the claim has been made. In this connection it will be useful to quote paragraphs 26 and 32 of the judgment.

26. 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 person 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 are 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 quantum of compensation. Sections 149, 170 and 173 are part of the one scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act."

"32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred u/s 173 of the 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle."

14. The same view has been reiterated by the apex Court by a bench of three Judges in the case of *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, wherein it was held in paragraph 6 as follows:

"6. The right of appeal is statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided u/s 149(2) of the Act."

15. Thus the settled law is that unless the conditions as mentioned in Section 170 of the Act are fulfilled and steps have been taken by the insurer in terms of the said provision, the insurer has no right of appeal to challenge the award on merits in appeal. In other words, to file an appeal questioning the quantum of compensation as well the finding regarding negligence or contributory negligence of the offending vehicle, the insurer has to confine the appeal only to the defence as provided u/s 149(2) of the Act.

16. Learned Counsel appearing for the appellants relied upon judgment of a Division Bench of this Court in the case of *Oriental Fire and General Insurance Company Ltd. v. Laxman Mahto and Ors.*, reported in I (1986) ACC 451 and the judgment of the learned single Judge in the case of *Greenseas Shipping Co. Pvt. Ltd. Vs. Chairman and Managing Director, Indian Bank and Others* and the interim order passed in one of the appeals in question i.e., Misc. Appeal No. 281 of 1999 reported in *Radha Kant Singh and Others Vs. Mahadeo Sao and Others*, wherein it has been held that though the Insurance Company cannot challenge the quantum of compensation on merit if it has not taken permission by filing an application u/s 170 of the Act, it can still challenge the principle fixing the amount of compensation.

17. In view of the aforesaid judgment of the apex Court, the view taken in the aforesaid cases by this Court are no longer good law. Only in a case the conditions precedent as provided u/s 170 are fulfilled the insurer can challenge the award including the quantum of compensation otherwise it has to confine the defences to the extent, as provided u/s 149(2) of the Act. It is difficult to conceive that in a case not covered by Section 170 of the Act the insurer is though barred in law from questioning the award on merit including the question of quantum of compensation, will be allowed to contest by filing an appeal the principle adopted by the Tribunal in fixing quantum of compensation if it has committed error in applying the principle.

18. In all the four appeals, the appellants have not taken the permission of the Tribunal to contest the claim u/s 170 of the Act on the ground of fulfilment of the conditions as mentioned therein. The Tribunal has not permitted them to be impleaded as a party by a reasoned order on coming to a finding that there is a

collusion between the claimant and the insured on the insured did not contest the claim. In that view of the matter, the appellants cannot be allowed to challenge the judgment and award on the ground of having adopted a wrong principle or ground for determining the quantum of compensation. The learned Counsel for the claimants-respondents is right in submitting that the appeals are not maintainable.

19. Accordingly, it is held that all the four appeals are not maintainable. The statutory amount already deposited in the appeals may be paid to the appellants.

20. R.S. Garg, J.--I agree.