
(2001) 08 KL CK 0001
In the High Court Of Kerala
Case No : M.F.A. No. 408/96

The United India Insurance Co. Ltd.

APPELLANT

Vs

Sreedharan and Others

RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2001) 08 KL CK 0001

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : D.S. Warriar, Sreelal N. Warriar, Mary Anita Jose and Meera Menon, for the Appellant; C. Vathsalan, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Mohamed Shafi, J.—This M.F.A. is filed by the third Respondent insurer challenging the quantum of compensation and liability in the award passed by the M.A.C.T., Vadakara in O.P. (M.V.) No. 2269 of-1995.

2. The counsel for the Respondent submitted that the above appeal preferred by the insurer is not maintainable in view of the fact that no permission u/s 170 of the Motor Vehicles Act is obtained by the insurer from the M.A.C.T. to contest the O.P. In support of the above argument the counsel for the Respondent relied upon the decision in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, where the Supreme Court has observed as follows:

It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceeding 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 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 No. 1--Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

3. The counsel for the Appellant. Insurer submitted that in the written statement filed by the Appellant as third Respondent before the M.A.C.T., they had reserved the right to take up all defences available to the insured under the Act and as per the terms and conditions of the policy and requested the Tribunal to permit the third Respondent to defend the case by invoking the provisions contained in Section 170 of the Act. Therefore the counsel submitted that the Appellant has made the request for permission to defend the case in the written statement itself and the tribunal had to grant permission to the Appellant in that behalf. It is also submitted that in this case, the other Respondents, though filed counter statements, no evidence is adduced by any of the other parties and therefore the Appellant had no opportunity to seek permission of the court to contest the matter u/s 170 of the M.V. Act. It is seen from the proceedings of the tribunal that after some adjournments of the case after the parties appeared and filed written statements, the learned Tribunal raised issues on 11th October 1995 and posted the case for enquiry on 4th December 1995. Exts. A-1 to A-3 were marked on behalf of the claimant on that day and the claimant did not adduce any oral evidence. It is also recorded in the proceedings of the Tribunal that Respondents 1 to 3 have no evidence and after hearing the parties the O.P. was posted for Orders to 15th December 1995. On 15th December 1995 again it was posted to 18th February 1995 for orders on which date the impugned Order is passed. Therefore it is clear that after the written statements were filed by the parties, the matter was posted by the learned Tribunal for enquiry. Therefore if in fact the other Respondents did not raise any contention, the third Respondent should have sought permission of the court to contest the matter on merits by invoking the provisions of Section 170 of the M.V. Act at the stage when the other Respondents submitted that they have no evidence in the case.

4. The argument advanced by the counsel for the Appellant that the statement that they may be permitted to contest the matter on merits by invoking the provisions of Section 170 of the Act made in the written statement is sufficient and no separate petition u/s 170 of the M.V. Act is necessary is not sustainable. In the decision, referred to above, the Supreme Court has held that the Tribunal has to pass a reasoned order permitting the insurer to contest the case if the conditions required u/s 170 of the M.V. Act are satisfied. It is also pertinent to note that in the above case before the Supreme Court written statement was filed by the insurer with the averment that in case the owner-insured did not

choose - to appear in these proceedings and contest, then the Insurance Company desired to get proper Orders u/s 170 of the Motor Vehicles Act. But the Insurance Company did not apply u/s 170 of the Act for getting permission of the court to contest the matter on merits. Therefore the Supreme Court has held that the insurer is not entitled to prefer an appeal against the award. In this case though the Appellant had raised a contention in the written statement that they may be permitted to invoke Section 170 of the Act to contest the matter on merits, in case the other Respondents did not contest the case, they have not filed any petition seeking permission to contest the matter on merits invoking provision of Section 170 of the Act. Therefore it is clear that the Appellant who failed to obtain permission from the Tribunal to contest the case u/s 170 of the Act is not entitled to prefer the above appeal challenging the award passed by the M.A.C.T. on merits of the case.

5. The submission made by the learned Counsel for the Appellant that in this case as the mother Respondents had filed counter statement and neither the claimant nor any other Respondents adduced any evidence, the Appellant had no opportunity to obtain permission of the court to defend the case on merits is not sustainable. When the Appellant found that when the matter came up for enquiry the other Respondents did not adduce any evidence, the Appellant ought to have sought permission of the court to defend the matter by invoking the provisions of Section 170 of the M.V. Act.

6. The submission made by the counsel for the Appellant that on merits-the impugned Order cannot be sustained and if the impugned Order is allowed to stand there will be heavy loss of public money also cannot be countenanced. The Appellant who is dealing with public money should have been diligent at the appropriate time to defend the case in accordance with law and after fallings in its legal and statutory obligations it cannot contend in the above appeal which is not legally sustainable that by allowing the impugned award to stand there will be huge loss of public money.

In view of what is stated above, the above appeal preferred by the Appellant insurer is not sustainable. Hence the appeal is dismissed.