

(2010) 01 CHH CK 0006
In the Chhattisgarh High Court
Case No : M.A. (C) No. 37 of 2010

United India Assurance Co. Ltd.

APPELLANT

Vs

Ramu Yadav and Others

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

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

Citation : (2010) 3 MPJR 75

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.K. Agarwal, J.—Both the above appeals are being disposed of by the common order as the common question of law is involved in both the appeals.

2. These are insurer's appeal filed against the award dated 24-08-2009 passed in claim Case No. 89/2009 and 90/2009 by Additional Motor Accident Claims Tribunal, (F.T.C) Balod, District Durg (for short the tribunal"), whereby and whereunder an amount of Rs.77,940/- for the injury sustained by respondent No. 1/claimant (M.A.(C) No.37/2010) and Rs.1,89,000/- for the death of deceased Soman Yadav (M.A.(C) No.39/2010) has been awarded against the appellant as well as respondents No. 2 & 3 along with interest @ 6% per annum from the date of the application till its actual payment.

3. Learned counsel for the appellant submits that the learned Tribunal has erred in awarding compensation to the claimants against the appellant as well as against respondents No. 2 & 3 inasmuch as the offending vehicle was not involved in the accident. Therefore, the award deserves to be set aside.

4. Undisputedly, the appellant has not obtained any permission u/s 170 of the Motor Vehicles Act (for short "the Act"), contest the case on any of the grounds that are available to the person against whom the claim has been made.

5. It is trite law that without obtaining permission u/s 170 of the Act, the appeal preferred by the Insurance Company is not competent on all the grounds which are available to the person against whom the claim has been made and the scope of appeal would be limited to the extent of challenge on the grounds which are available to the Company u/s 149 (2) of the Act.

6. The Supreme Court in case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, has observed as under :

We have already held that unless the conditions precedent specified in Section 170 of 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits. In that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of section 149 of 1988 Act. But such applicant for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

7. By applying above referred proposition of law in the facts and circumstances of the present case, it is crystal clear that the appeal has not been preferred by the appellant challenging the award on the grounds which are available to it u/s 149(2) of the Act and, therefore, the appeal being filed on the grounds available to the person against whom the claim has been make without obtaining any permission u/s 170 of the Act, not maintainable.

8. In view of above, the appeals being not maintainable are liable to be and are hereby dismissed at admission stage.