

(1984) 09 AHC CK 0052
In the Allahabad High Court
Case No : F.A.F.O. No. 461 of 1977

United India Fire and General Insurance Co. Ltd., Kanpur and
Another

APPELLANT

Vs

Gulab Chandra Gupta

RESPONDENT

Date of Decision : 27-09-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D, 96(2), 96(6)

Citation : (1985) 1 ACC 52 : AIR 1985 All 44 : (1986) 59 CompCas 678

Hon'ble Judges : R.K. Shukla, J;A. Banerji, J

Bench : Division Bench

Advocate : D. Sanyal, for the Appellant; G.R. Jain, for the Respondent

Final Decision : Dismissed

Judgement

A. Banerji, J.—These two appeals arise out of the Award dated 6th July, 1977 by the Motor Accident Claims Tribunal, Etawah awarding a sum of Rs. 30,000/- with pendent lite and future interest at the rate of 6% per annum to Gulab Chandra Gupta, the victim of the motor accident. The Tribunal further directed that the aforesaid amount of Rs. 30,000/- will be payable by the Insurer defendant No. 2.

2. The Insurer, United India Fire & General Insurance Co. Ltd. Kanpur has filed F. A. F. O. No. 461 of 1977 against the above award by the Claims Tribunal Jai Prakash Narain Gupta, the owner of the motor vehicle, which was involved in the accident has been joined as appellant No. 2 in the above appeal, There is a cross-objection in the above appeal by Gulab Chandra Gupta, claiming a further sum of Rs. 20,000/-.

3. F. A. F. O. No. 466 of 1977 has been filed by Jai Prakash Narain Gupta, the owner of the vehicle, which was involved in the accident. He has come up against the award of the Claims Tribunal.

4. Sri G.C. Gupta, the claimant alleged that on 14th April, 1975 while he was standing near the Truck No. UPG 2024 near the Primary School, Ajitmal, Jai

Prakash Narain Gupta, owner of the aforesaid truck himself drove the truck backwards rashly and negligently, with the result that the right foot of the claimant was crushed and he lost consciousness. Jai Prakash Narain Gupta took the claimant to the Hallet Hospital, Kanpur and got him admitted there. As a result of the injury the right leg of the claimant had to be amputated about a week after the accident. He had, however, to stay in the hospital for two and half months for treatment and convalescence. He claimed Rs. 5500/- as special damage and Rs.36,500/- as general damages with interest at the rate of 6% per annum. This claim petition was filed on 6th September, 1975.

5. The United India Fire & General Insurance Co. Ltd. thereafter referred to as the Insurer), contested the petition and it denied that the accident took place with Truck No. UPG 2024 and the claimant had any right to claim any compensation. It was further pleaded that the Insurer was not served with any notice and consequently the claimant was not entitled to any compensation from the Insurance Company. It was further pleaded that the claim petition was not legally maintainable.

6. Jai Prakash Narain, owner of the truck pleaded that no accident took place with his truck on the date, time and place alleged and he had been sued on account of enmity. It was further pleaded that no First Information Report had been lodged at the Police Station Ajitmal, which is barely 100 paces from the alleged place of occurrence. A delayed First Information Report had subsequently been lodged with the Superintendent of Police, Etawah. His case further was that in any event there was no rash and negligent act on his part and in any case the petitioner himself would be deemed to be negligent in not hearing the sound of the vehicle starting. He further denied that the claimant was doing any transport business. He was carrying on a shop of edibles and used to supply the same to the transport agencies situated near the shop and his earning was not more than Rs. 5/- a day and consequently the compensation claimed by him was excessive. It was also pleaded that the petitioner was not 37 years old but was only 52 or 55 years. He stated that no amount could be awarded to the victim's dependents since the victim was alive. Lastly, it was stated that the claim was bad for non-joinder of the partners as a party in the proceedings and the claim was, therefore, liable to be rejected.

7. The Claims Tribunal held that the claimant being alive, there was no question of payment of any compensation to the dependents of the claimant. On Issue No. 3 the Tribunal held that the accident took place at Ajitmal on 14th April, 1975 at about 8.00 A.M. and that the accident of the claimant took place by the truck of Jai Prakash Narain, who was himself driving the vehicle. Under Issues Nos. 1 and 4 the Tribunal held that the claimant was about 50 years of age at the time of accident and his earning was about Rs. 400/- per month from the motor transport business. Taking the average span of life to be 70 years, the Tribunal held he would have been in business for another 20 years, he awarded Rs. 25,900/- as compensation for the loss of limb, pain suffered and the amenities which he had

been deprived of as well as pecuniary loss suffered. A further sum of Rs. 4100/- was awarded as special damage. The Tribunal further held that since the amount of Rs. 30,000/- would be under the insurance cover, it would be primarily payable by the Insurer.

8. We have heard the learned counsel for the parties, Mr. Sudhir Chandra for the Insurer, Mr. G.R. Jain for the claimant and Mr. T. C. Porwar for the owner of the truck.

9. Mr. G.R. Jain, learned counsel for the respondent raised a preliminary objection regarding the maintainability of the two appeals. Mr. Jain contended that since the amount awarded has been made the responsibility of the Insurer, the appeal filed by the owner of the truck was wholly misconceived as he was not a "person aggrieved" within the meaning of Section 110 D of the Motor Vehicles Act, 1939 therein-after referred to as the Act). In support of this contention he cited a Division Bench authority of the Calcutta High Court reported in Kantilal and Bros. and Another Vs. Ramarani Debi and Others, . He further contended that a joint appeal by the Insurer and the owner of the vehicle involved in the accident, was not maintainable, particularly when the owner had filed a separate appeal and that appeal was also not maintainable. For this proposition too he relied upon the Division Bench decision in the case of Kantilal & Brothers (supra). He took a third objection that it was not open to the Insurer to file an appeal to challenge the quantum of compensation awarded and further, it was not open to the Insurer to challenge any finding which was not covered within the parameter of Section 96(2) of the Act. In support of his contention he relied on a decision of the Hon'ble Supreme Court reported in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, . In other words his contention was that it was not open to the Insurer to take up any of the pleas that were open to the owner of the truck unless the right to-do so had been reserved in the policy itself, which was not the position in the instant case. The amount awarded as compensation was not open to challenge by the Insurer and he was liable to pay the amount. He further alleged that in the appeal the Insurer could not take up any ground except what was permitted to be taken by way of defence as mentioned in Section 96(2) and in Section 96(6) of the Act.

10. Mr. Jain further stated that even after the dismissal of the two appeals his cross-objection would survive and has to be considered on merit. In the cross-objection a further sum of Rs. 20,000/- was claimed. Mr. Jain admitted that the cross-objection has been overvalued. The original claim of the claimant was for Rs. 42,000/- in all. The award granted him Rs. 30,000/-. He could, therefore, have filed a cross-objection for a sum of Rs. 12,000/-only. His claim for Rs. 20,000/- is clearly in excess by Rs. 8000/-. Mr. Jain, therefore, prayed that his cross-objection be treated as valued at Rs. 12000/-.

11. Mr. Porwar, learned counsel for the owner of the truck, Jai Prakash Narain, stated that he was not pressing the Appeal No. 461 of 1977 for he had filed his own Appeal No. 466 of 1977. In reply to the contention of Mr. Jain that his

appeal was not maintainable as he was not a "person aggrieved", Sri Porwar urged that in the event the Insurance company did not pay or was held not liable to pay any part of the amount awarded, it was liable to be recovered from him by a suit by the insurer. Consequently, his liability did not end. Further, there was a finding that the accident was caused by rash and negligent driving by him. He was aggrieved by the above finding and was, therefore, entitled to challenge the award.

12. Mr. Sudhir Chandra, learned counsel for the Insurer urged that his appeal was maintainable notwithstanding the fact that the owner of the vehicle had joined the Insurer as appellant. He was entitled to challenge the award on the grounds available to the Insurer u/s 96(2) of the Act as well as on the ground that no decree/award could be passed against the Insurer at all. He urged that there was no finding in the award that the accident was caused by rash and negligent act of the driver of the vehicle namely, Jai Prakash Narain. If the accident was not as a result of rash and negligent act, the owner of the vehicle would not be vicariously liable for the accident and consequently, the Insurer whose liability was a consequence of the contract of insurance with the owner of the vehicle would also not be liable. In other words he submitted that since there was no finding that the accident was caused due to rash and negligent act, neither the owner nor the Insurer could be made liable for paying any compensation. In support of this contention he cited a decision of the Hon'ble Supreme Court in the case of *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, . He further urged that the appeal by the Insurer would not be confined only to the grounds available u/s 96(2) of the Act but on other grounds also viz. where the award was on the face of it bad in law, contrary to law or wholly without jurisdiction or a nullity. He urged that if the appeal was confined only to the defence available as contained in section 96(2) of the Act, then the Insurer would have no remedy, for example where the compensation awarded was in excess of Rs. 50,000/-and the Insurer had been saddled with the entire amount or where the Tribunal was not properly constituted or where there was no finding that the accident was caused due to rash and negligent act. He being aggrieved, would have no other remedy in law except to approach this Court u/s 110D of the Act. He, therefore, urged that the appeal by the Insurer was not liable to be rejected on the preliminary ground taken by the learned counsel for the claimant.

13. First of all, we will consider the question whether a joint appeal by the Insurer and the owner of the vehicle is maintainable. It is apparent from a perusal of the provision of Section 96(2) of the Motor Vehicles Act that the ground for challenge to a claim by the Insurer of the vehicle is limited and confined to the matters which are within the purview of Section 96(2) read with Section 96(6) of the Act. Similar would be the position in the appeal against the Award. In the case of *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, their Lordships held that an Insurer cannot challenge in appeal the award of compensation by the Claims Tribunal on any other ground than

what is contained in Section 96(2) of the Act. The owner of the vehicle involved in the accident or which was the cause of accident has, however, a very wide field of challenge to the order passed by the Claims Tribunal. He is not bound by any provision of Section 96 of the Act like the Insurer but can challenge on all grounds relating to the cause and responsibility of the accident, the liability, the quantum of compensation awarded, the question of status of the dependents as well as the appellants' right to claim damages. The nature of the grounds would, therefore, be different in the case of an Insurer from that of the owner of the vehicle. It is, therefore, apparent that it would not be open to the Insurer to challenge the award on the same grounds as are open to the owner of the vehicle. There are two exceptions to this rule. Firstly, where the right to contest is reserved in the Policy in favour of the Insurer and secondly, where the person against whom the claim had been made has failed to contest the claim, a right has been granted to the Insurer u/s 110-C (2-A)(ii) of the Act to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. In the present case, the claim has been made against the owner of the vehicle, and the Insurance Company has been impleaded as a party. However, nothing has been brought to our notice that the right to defend claim on behalf of the owner of the vehicle was reserved in favour of the Insurer under the Policy. Further, in this case the owner of the vehicle contested the claim. Consequently, none of the exceptions mentioned above has any application in the present case. Thus, neither the owner of the vehicle nor the Insurer can have a common ground to challenge the award. Consequently, applying the principles mentioned above a joint appeal by the Insurer and the owner of the vehicle is not maintainable. It could only be on behalf of one of them. We are supported in this view by the decision of the Hon'ble High Court in the case of Kantilal and Bros. and Another Vs. Ramarani Debi and Others, .

14. Mr. Porwar, learned counsel for the Insurer stated that the owner's name be deleted from the Appeal No. 461. We have acceded to this prayer. The result is that the Appeal No. 461 of 1977 will be treated as an appeal by the Insurer alone.

15. We will now consider the question of the maintainability of the above appeal filed by the Insurer. The Insurer can only take such defence in an action u/s 110-A of the Act as is available to it u/s 96(2) of the Act. All this pertains to the Insurance Policy in respect of the vehicle issued by the Insurer (such as) the question whether the Policy was valid or cancelled by the mutual consent or whether the certificate of the Insurance was surrendered or whether the certificate had been lost or destroyed or whether there has been a breach of the specific condition of the Policy, or whether the Policy is void on the ground that it was obtained by non-disclosure of a material fact or by a misrepresentation of fact which was false in some material particular. The question came up for consideration before their Lordships of the Supreme Court in the case of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, and their Lordships observed : --

"The question then really is, what are the defences that Sub-section (2) makes available to an insurer? That clearly is a question of interpretation of the sub-section.....

Now the language of Sub-section (2) seems to us to be perfectly plain and to admit of no doubt or confusion. It is that an insurer to whom the requisite notice of the action has been given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely, after which comes an enumeration of the grounds. It would follow that an insurer is entitled to defend on any of the grounds enumerated and no others. If it were not so, then of course no grounds need have been enumerated. When the grounds of defence have been specified, they cannot be added to. To do that would be adding words to the statute..... We therefore think that Sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is not specified in it."

15A. The above law laid down by their Lordships has been universally followed and still holds good. It is not necessary to cite cases referred by the learned counsel for the claimant respondent in support of this proposition by the various High Courts. The law laid down is clear and unambiguous.

16. We then come to the question as to what matters can be taken in an appeal by the Insurer. Learned counsel for the Insurer urged that apart from all those grounds which are permissible u/s 96(2) of the Act, the Insurer can also take up pleas where orders passed by the Claims Tribunal exceed its jurisdiction. In other words, his contention was that if in making their award, the Claims Tribunal has considered matters which were beyond its jurisdiction, an appeal would lie u/s 110-D of the Act. The reason is that the Insurer would be an "aggrieved person" and would therefore be entitled to raise the same in appeal u/s 110-D of the Act. Learned counsel urged that where the Claims Tribunal awards compensation in excess of Rs. 50,000/- and makes the entire amount payable by the Insurer that would be clearly beyond its jurisdiction. If it was not open to the Insurer to challenge the award of any amount in excess of Rs. 50,000/- then in that event, the Insurer would be without a remedy. This contention, in our opinion, is untenable. Normally the Claims Tribunal does not award any amount against the Insurer in excess of what is laid down in the Act. But if it did so, by mistake or otherwise, it would be open to the Insurer to pay the excess amount and then sue the owner of the vehicle for the recovery of the excess. Their Lordships in the case of *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, considered this aspect of the matter also and this is what they said : --

"Secondly, if he has been made to pay something which on the contract of the Policy he was not bound to pay, he can under the proviso to Sub-section (3) and Sub-section (4) recover it from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the

insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss."

17. In our opinion the above observation gives a complete answer to this part of the argument of the learned counsel. This contention also has, therefore, no merit.

18. We now come to the next part of the argument of the learned counsel for the Insurer-appellant. The argument was that there being no finding of rash and negligent act on the part of the driver of the vehicle, there would be no liability either on the driver or on the owner of the vehicle and, consequently, no amount would be payable by the Insurer. In the present case, the driver and the owner of the vehicle involved in the accident was the owner himself. Any liability incurred by him under the Policy would be protected by the Insurer to the extent permissible under the law, or by the terms of the contract of Policy. He argued, since there was no finding of any rash and negligent driving on the part of the driver, no liability could be fastened on the owner and consequently nothing would be deemed to have been passed on to the Insurer. In other words, his contention was that if no amount was recoverable from the owner of the vehicle, nothing would be recovered from the Insurer as well. In support of this contention, learned counsel relied on the case of *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, .

19. In the above case, an accident took place between the victim's car and a truck owned by the appellant, as a result of some mechanical defect in the truck, the owner denied that there was any rash or negligent act on the part of the driver of the truck. The Claims Tribunal gave a finding that the accident was caused due to rash and negligent driving. Substantial amount was therefore awarded as compensation. The owner filed an appeal before the High Court and laid stress that the accident was due to a mechanical defect and not due to any rash and negligent act. Although the High Court affirmed the finding of the Claims Tribunal their Lordships expressed their opinion that it was not necessary to prove any negligence on the part of the driver. Their Lordships of the Supreme Court also notice a similar view taken in the *Zakaria and Others Vs. Naoshir Cama and Others*, . Their Lordships observed : --

"Though this question does not arise in this appeal or the two High Courts have expressed an opinion which in our view has no basis either in the Legislative history or on a construction of the relevant provisions of the Motor Vehicles Act we feel it necessary to state the position of law.....

The liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the Law of Tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable it is necessary to prove that the

servant was acting during the course of his employment and that he was negligent

In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff and that (2) there was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. Apart from it in common law the master is not liable for as it is often said that owner of a motor car does not become liable because of his owning a motor car."

Their Lordships further observed : --

" u/s 95(1)(b)(i) of the Act it is required that policy of insurance must be a policy which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. It may be noted that what is intended by the policy of insurance is insuring a person against any liability which may be incurred by him. The insurance policy is, only to cover the liability of a person which he might have incurred in respect of death or bodily injury. The accident to which the owner or the person insuring is liable is to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is therefore obvious that if the owner has not incurred any liability in respect of death or bodily injury to any person there is no liability and it is not intended to be covered by the insurance. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The expression "liability which may be incurred by him is meant as covering any liability arising out of the use of the vehicle. It will thus be seen that the person must be under a liability and the liability alone is covered by the insurance policy."

Further their Lordships observed : --

"The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else..... The concept of owner's liability without any negligence is opposed to the basic principles of law... The proof of negligence remains the lynch pin to recover compensation"

It is clear from the above that the liability of the Insurance company is for the liability of the owner vis-a-vis the vicarious liability incurred by the driver of the vehicle. If the driver has incurred a liability due to a rash or negligent act the master or owner becomes vicariously liable and the provision of Section 95 of the Act enables the Insurance company to take the liability where death or bodily injury has been caused to a third person. What is relevant therefore, is that there

must be a rash and negligent act in driving the vehicle. Where the driver caused death or bodily injury to a third party and that cannot be ascribed to any rash or negligent act on his part. The expression "liability which may be incurred by him" does not arise. Consequently, no liability would pass on to the owner vicariously or to the Insurer.

20. The law laid down by their Lordships in the above case, thus, makes it clear that a finding of a rash and negligent act is imperative in a case where the driver/owner and the Insurance company are held liable. But then is it open to the Insurance company to raise this in the appeal Learned counsel for the claimant respondent took the stand that it was not open to the Insurer to take this ground in appeal or challenge the appeal on this ground in view of the decision in the case of *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, . It may be recalled that their Lordships held that the Insurer may challenge the award of compensation only on grounds enumerated in Section 96(2) of the Act and no other. We are of the view that the objection of the learned , counsel in this regard has force.

21. We have not been referred to any decision where the High Court took the view in appeal that the Insurer could plead that no amount was payable by it where the Claims Tribunal had not given a finding on the question of rash and negligent act. However, in the case of *Hukum Chand v. Subhashini Rai* 1971 ACJ 156 Calcutta, the Insurer filed an appeal upon grounds which were beyond the scope of Section 96(2) of the Act The owner of the vehicle sought to support the appeal and contended that the appeal be decided on merits. It was urged that the provisions of Order 41 of the CPC were applicable. The Division Bench negatived the contention and held that the appeal filed by the Insurer was not maintainable and the question of the owner supporting it did not arise. We are of the view that it was not open to the Insurer to take this ground in appeal in view of the law laid down , in the case of *Capt. Itbar Singh*(supra) although the question did not specifically arise in the above case in view of the observation that apart from the pleas enumerated in Section 96(2) of the Act, no other ground was available to the Insurer. We do not propose to go into the question whether the order passed by the Claims Tribunal was a nullity or whether it was wholly without jurisdiction, for the reason that this point cannot be urged by the Insurer in the present case. We feel that such a ground is open only for the owner of the vehicle or the driver, if they have been saddled to pay any amount In the present case, the driver was the owner at the time of the accident and he has not been saddled with the payment of any amount awarded as compensation

22. The Insurer has not challenged the decision of the Claims Tribunal on any of the grounds enumerated in Section 96(2) of the Act The only point raised on its behalf was that there being no rash and negligent act on the part of the driver or the owner, no amount could have been awarded as compensation against them and as such no amount was liable to be paid by the Insurer. We have already indicated that such a ground was not available to the Insurer in the appeal filed

in this Court Consequently, the contention of the learned counsel for the claimant-respondent that the appeal by Insurer is not maintainable, has force and is upheld.

23. We will now consider whether the appeal by the owner of the vehicle, i.e. Appeal No 466 of 1977, is maintainable. Section 110D of the Act makes it clear that against the decision of a Claims Tribunal an appeal can be filed by a "person aggrieved". The question, therefore, is whether the owner of the vehicle in the present case is a person aggrieved In common parlance the expression "person aggrieved" would be some one who is affected by the order. The expression "affected by the order" means a person who has been visited with some liability or disadvantage. A person who has been saddled with a liability and ordered to pay some amount as compensation, would be a person aggrieved He would have a right to file an appeal u/s 110- D of the Act But the question, which arises in this case is, whether a person -- who has been held liable but has not been ordered to pay any amount as compensation, would he be" a person aggrieved.?

24. In the present ease, the owner has been held responsible for the accident and a sum of Rs. 30,000/- has been awarded as compensation and it has been made payable by the Insurer. No amount of compensation awarded is to be paid or borne by the owner. Would he still be a person aggrieved" within the meaning of Section 110-D of the Act? In our opinion, the answer would be in the negative. He is not visited with any liability to pay any amount He has not been put to any disadvantage which makes him liable to pay the amount Under the law, the liability up to Rs. 50,000/- may be ordered to be borne by the Insurer. Even if the claim of the claimant was fully decreed and the Insurer was made liable to pay the entire amount, there would be no liability on the owner to pay any amount, under the said decree. He would not be a person aggrieved A finding that the owner/ driver was responsible for causing the accident or a finding that the accident was as a result of rash and negligent act of the driver would not make them person aggrieved unless there was a direction in the award that they were liable to pay some part or the entire amount of the compensation awarded The above finding will not make them "person aggrieved" within the meaning of Section 110-D of: the Act Their real grievance should be against the award of compensation.

25. The Insurer will be a person aggrieved, but it is well settled that the Insurer cannot challenge the quantum of compensation awarded in appeal See Ramesh Chandra Vs. Randhir Singh and Others, , C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, , Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., and Kantilal and Bros. and Another Vs. Ramarani Debi and Others, .

26. The term "person aggrieved" as appearing in Section 37(1) of the Advocates Act, 1961 came in for consideration in the case of Adi Pherooszah Gandhi Vs. H.M. Seervai, Advocate General of Maharashtra, Bombay, by Chief Justice Hidayatullah. The above words came in for consideration before the Courts in

England in *re side Botham* (1880) 14 Ch D 458. The words were explained to mean:

"Not really a person who is disappointed of a benefit which he might have received if some order had been made. A "person aggrieved must be a man who had suffered a legal grievance, a man against whom a decision had been pronounced which had wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something"

The learned Chief Justice laid emphasis on the words "a legal grievance" against the decision which wrongfully deprives him of something or which wrongfully affected his title to something The learned Chief Justice observed that the correct meaning of the term would be:

" He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him,"

27. Applying the principle laid down by the learned Chief Justice, it appears to us that the owner of a vehicle can be an aggrieved person if he has been ordered to pay some part of the compensation awarded by the Claims Tribunal It would then be a legal grievance and the order would be such as may injure him and the order passed by the Claims Tribunal If not challenged, would injure him. In the present case, the owner has not suffered any legal grievance. He may have suffered a grievance if there would have been a finding against him that he was responsible for the accident but that by itself was not likely to cause him any injury. Where there is a legal grievance and the grievance has tendency to injure a person he would be deemed to be a person aggrieved Such a situation does not arise in the present case as far as the owner of the vehicle is concerned Consequently, he would not be a person aggrieved and his appeal would not be maintainable u/s 110D of the Act. Similar view has been taken in the case of *Kantilal and Bros. and Another Vs. Ramarani Debi and Others*, . The Division Bench in the above case held that:

"The grievance for which a person may appeal must be genuine and real grievance affecting prejudicially his interests. In the present case there has been no legal grievance, denial or deprivation of legal right or financial interests nor any order affecting prejudicially the interest of the owners of the offending car. There has been no legal or practical injury to Kantilal and Brothers."

In the above case also the entire amount awarded as compensation was payable by the Insurer and no part of it was to be paid by the owners, Kantilal and Brothers. The facts of this case in this regard were similar. For the reasons mentioned above, the objection raised by the learned counsel for the claimant respondent to the appeal of the owner has force and is upheld The owners' appeal is held to be not maintainable.

28. For the reasons indicated above, we upheld the preliminary objection raised by the learned counsel for the claimant-respondent and held that both the appeals are not maintainable.

29. We are now left with the cross-objection filed by the claimant-respondent in the appeal filed by the Insurer. The cross-objection survives although the appeal fails. In this cross-objection the prayer is for enhancement of the amount of compensation. As indicated earlier learned counsel now limits the enhancement to a sum of Rs. 12000/-. Learned counsel urged that the amount awarded by the Claims Tribunal erred on the low side for the person receiving injuries has been permanently handicapped, as one of his legs had to be amputated as a result of the accident. It is no doubt true that the claimant suffered a severe injury which has the effect of making him handicapped. We had considered the evidence on record and the reasons given by the Claims Tribunal for limiting the award to the tune of Rs. 30,000/- and we are satisfied that there is no legal error in computing the compensation awarded in the present case. It is well settled that the compensation cannot be reduced or enhanced merely because the appellate (sic) court may have awarded a lesser or a higher amount in its discretion, unless the appellate court finds that the amount awarded was illegal or offended the conscience of the Court being too inadequate or where the Court failed to take into consideration the relevant material or circumstances on the record. Having examined the record we are satisfied that the Claims Tribunal had committed no error in awarding a sum of Rs. 30,000/- in the present case. We, therefore, find no merit in the cross-objection.

30. In the result, therefore, both the appeals and the cross-objection fail in the circumstances, the parties shall bear their own costs.