(2008) 03 DEL CK 0193

In the Delhi High Court

Case No : MAC Appeal No. : 285 of 2005 and CM No. : 5216 of 2005

United India Insurance Co. APPELLANT

Vs

Shri Manoj Kumar and Others RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

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

Citation : (2008) 11 ILR Delhi 83 Supp

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sakshi Mittal, for the Appellant; O.P. Mannie, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—Mr. O.P. Mannie, counsel for the respondent has raised preliminary objection to the very maintainability of the present appeal. The contention of the counsel for the respondent is that the appellant insurance company has filed the present appeal challenging the impugned Award dated 10.11.2004 on the quantum of compensation. It is not in dispute that the appellant has preferred the present appeal so as to assail the findings of the Tribunal on the quantum of compensation. It is also not in dispute that the application moved by the appellant u/s 170 of the Motor Vehicles Act was dismissed by the Tribunal vide order dated 7th May, 2002. It is further not in dispute that no remedy was taken by the appellant so as to challenge the said order. By way of this application the appellant seeks permission of this Court to challenge the impugned Award on all the grounds as are available to the owner and driver of the offending vehicle.

2. I have heard learned counsel for the parties and have perused the record.

3. It is a well settled legal position that the insurer can assail the findings of the Tribunal only when the grievance is made with regard to any violation to the terms and conditions of the insurance policy as enumerated u/s 149(2) of the

Motor Vehicles Act. The defence of the insurer is thus restricted within the four corners of Section 149(2) of the Motor Vehicles Act and in a case where the insurer finds any of the conditions satisfied as contemplated under sub Section (a) and (b) of Section 170 of the Motor Vehicles Act then the insurer has every, right to move an application on which the Tribunal is required to pass a reasoned order. In the present case the application was moved by the appellant insurance company, but the same was dismissed vide orders dated 7th May, 2002. The said order was not challenged by the appellant and before the Appellate Court similar application has again been preferred so as to challenge the findings of the Tribunal on all grounds as are available to the owner and driver of the offending vehicle.

4. In my considered view this is not the stage to entertain such an application as entertaining such an application a. the appellate stage would mean to reverse the clock and relegate the parties for a fresh trial. Such a course appears to be neither correct nor legally permissible keeping in view the M.V. Act being a beneficial piece of social legislation. The language of the said Section 170 of the Motor Vehicles Act clearly postulates that such an application can only be moved before the claims Tribunal and it is within the judicial discretion of the Tribunal to grant permission u/s 170 of the Motor Vehicles Act or decline such a permission. Needless to state such a discretion cannot be exercised by the tribunal arbitrarily or capriciously. In the eventuality of any party feel aggrieved with the order of the Tribunal passed u/s 170 of the Motor Vehicles Act then the remedy has to be availed immediately after passing of such order and not at the appellate stage. I, therefore, do not find that the application filed by the appellant u/s 170 of the Motor Vehicles Act can be maintained at the appellate stage, therefore, the same is dismissed.

MAC APP. No. 285/2005

Pursuant to the dismissal of CM No. 5216/2005, I do not find that the present appeal filed by the appellant can be maintained. In National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, the Apex Court has clearly held that the insurance company cannot travel beyond the statutory defence as available to it u/s 149(2) of the Motor Vehicles Act and the said provision does not entitle the insurance company to challenge the Award either on the negligence or on the quantum of compensation. The present appeal filed by the appellant cannot be held maintainable. The same is, accordingly dismissed with directions to release the statutory deposit in favour of the appellant insurance company.

