
(2003) 02 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : LPA (C) No. 91 of 2001

United India Insurance Co.

APPELLANT

Vs

Veena Kumari Bakshi

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 149(2), 170, 173

Citation : (2004) 2 ACC 752 : (2005) ACJ 1258 : (2003) 2 JKJ 308

Hon'ble Judges : B.C. Patel, C.J;S.K. Gupta, J

Bench : Division Bench

Advocate : Vishnu Gupta, for the Appellant; Radha Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—This letters Patent Appeal is preferred against the judgment and order made by the learned Single Judge in CIMA No. 65-

A/2001 dated 9.7.2001, whereby the appeal was dismissed and compensation awarded by the Motor Accident Claims Tribunal, Jammu on

20.4.2001 was upheld.

2. A freak but few facts of the case may be noticed. Accident involving the death of the deceased Kuldeep Kumar Bakshi occurred due to rash

and negligent driving of the offending Truck No. JKS-3858 by its driver Nirmal Singh, on 21.4.1998 near village Chowki Choura under the

jurisdiction of Police Station, Akhnoor. The deceased Kuldeep Kumar Bakshi was a State Government employee at the time of accident and

serving as Head Constable in the Police Tele-Communication. He was drawing a monthly salary of Rs. 7,072. The heirs of the deceased, which

consist of his wife and two minor children, preferred a claim petition for compensation in respect of death of the deceased before the Motor

Accident Claims Tribunal, Jammu. The Tribunal on appreciation of the evidence and going through the material assembled on record, assessed the loss of dependency of the heirs of the deceased and awarded compensation of Rs. 8,61,416 with interest at the rate of 9% per annum, payable by the Insurance Company with whom the offending vehicle stood insured at the time of the accident. Aggrieved by the amount awarded, the Insurance Company assailed its correctness before the learned Single Judge in a Civil First Miscellaneous, Appeal. The learned Single Judge considered the facts and circumstances of the case and debate addressed by the appellant's counsel and did not find any merit and dismissed the same vide order dated 9.7.2001, which became subject-matter of challenge before us in this LPA.

3. The appellant's counsel at the outset, laid emphasis that the learned Single Judge dismissed the appeal without either summoning the record of the Tribunal or issuing notice to the respondent, but ultimately came on quantum of compensation awarded by the Tribunal without appreciating the evidence in its proper perspective and estimating the loss of dependency of heirs of the deceased to award just compensation. It was further submitted that claimants/family members of the deceased were entitled to seven years full pay being a permanent Government employee of the State Police Department, but this fact was neither considered by the Tribunal nor appreciated by the learned Single Judge in appeal. That the learned Single Judge was required to consider the whole matter afresh in this statutory appeal and not in summary manner, as has been done in this case.

4. It is significant to point out that the main contest in appeal before the learned Single Judge was by the Insurance Company which wanted the award of the Tribunal to be reduced. In this connection, we may profitably refer to Section 170 of the Motor Vehicles Act, 1988, which reads as under:-

170. Impleading insurer in certain cases--Where in the course of any inquiry, the Claims Tribunal is satisfied that:-

(a) there is conclusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim.

It may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the

proceedings and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149,

the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

5. It clearly shows that the insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings 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. 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 the Insurance Company as respondent 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 but

that does not mean that the Insurance Company can avail a larger defence on merit unless permission u/s 170 of the Act is granted by the Tribunal

Consequently, it must be held that on the facts of the present case, the Insurance Company is not entitled to file an appeal on merits of the claim

which was awarded by the Tribunal. It was not disputed before us that the Insurance Company on account of the contract of Insurance is liable to

comply with the entire award amount of compensation that precisely is the reason why the insured has not thought fit to challenge the compensation

in these proceedings.

6. In case National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , a similar question came up for consideration before the

Apex Court, and it was observed as under:

Even if no appeal is preferred u/s 173 of 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 finding as regard negligence or contributory negligence of the offending vehicle, unless

the conditions precedent specified in Section 170 of 1988 Act is satisfied. Motor Vehicle accident claim is a tortious claim directed against tort-

feasors who are the insured and the driver of the vehicle and the insurer comes

to the scene as a result of statutory liability created under the Motor Vehicles Act. The Legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.

7. The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds the grounds of challenge cannot be enlarged on the premise that the insured or the persons against whom a claim has been made has not filed any appeal. Section 149(2) of 1988 Act limits the insurer's appeal on those enumerated grounds and the appeal being a product of the statute, it is not open to an insurer to take any other plea other than those provided in Section 149(2) of 1988 Act. The Insurance Company contested the claim of the claimants before the Tribunal and allowed the proceedings to, continue and made an application u/s 170 of the Act for a permission to contest the claim on all the grounds enumerated therein only after the closure of the respondent's evidence and during the course of arguments, which stood rightly rejected by the Tribunal at that stage.

8. The Court must give effect to the real purpose to the provision of law relating to the award of compensation in respect of the accident arising out of the use of the Motor Vehicle and cannot permit the insurer the right to defend or appeal on grounds not permitted by law by using a backdoor method. Any other interpretation will produce unjust results and open the gates for the insurer to challenge any award. The Court has to give effect to true object of the Act by adopting a purposive approach.

9. Therefore, the argument put across by the appellant's counsel on the quantum of compensation granted to the claimant is certainly not available to the insurer in the facts and circumstances of the case under the Act, in view of the statutory bar against the insurer in proceedings of claim of compensation. This position is clear on a harmonious reading of the statutory provisions in Sections 147, 149 and 173 of the Act.

10. Another limb of argument put forth by the appellant's counsel is that the Tribunal had not taken into account the amount of full pay got by the

family for a period of seven years, subsequent to the death of the deceased.

11. It is apt to Point out that the issue with regard to the receipt of full pay by the family for seven years is a question of fact which could have been

proved by the Insurance Company by raising this plea before the Tribunal and adduced evidence. In such a situation, such a Claim put forth by the

Insurance Company cannot be entertained at the appellate stage. This contention of the appellant, therefore, in our view, being bereft of any

substance does not merit acceptance. We, therefore, do not find any infirmity legal or factual in the order impugned so as to invite interference in

appeal.

12. We, therefore, find no merit in this appeal and is accordingly dismissed.