
(2004) 03 GAU CK 0052
In the Gauhati High Court
Case No : C.R.P. No. 13 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Sh. Lalsangliana and Another

RESPONDENT

Date of Decision : 30-03-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2004) 3 GLR 33

Hon'ble Judges : P.P. Naolekar, C.J

Bench : Single Bench

Advocate : A.R. Malhotra, for the Appellant; None, for the Respondent

Judgement

P.P. Naolekar, C.J.—The petitioner Insurance Company is a subsidiary of the General Insurance Corporation of India and is engaged in the business, inter alia, of insuring motor vehicles against comprehensive and third party risks, apart from others, under the relevant provisions of Motor Vehicles Act, 1988 and the Rules thereunder.

2. The respondent No. 2 Smt. K. Lalrengpuii is the owner of the motor vehicle bearing Registration No. MZ-01-B-8600 (City Bus) which met with an accident at College Veng, Aizawl on 26.1.2003 at around 9.00 PM as a result of which the claimant respondent No. 1 Sh Lalsangliana's car, ZRM-4417 was damaged. The claimant moved a petition for compensation before the MACT, Aizawl which was registered as MACT Case No. 25/03. The Insurance Company was made a party to the claim petition and submitted its written statement. However, according to the petitioner Insurance Company, the owner of the vehicle failed to contest the claim and, therefore, the Insurance Company filed an application u/s 170 of the MV Act praying for permission of the court for contesting the matter on all or any of the grounds that are available to the owner of the vehicle. The Claims Tribunal dismissed the application of the Insurance Company on the premises that provision of Section 170 of the MV Act can be invoked only when the Insurer is not impleaded as a party to the proceedings from the beginning and in the

course of inquiry the Tribunal impleaded the Insurance Company as a party. As the Insurance Company is a party from the beginning, no permission can be given to contest the claim on any other ground than permissible u/s 149(2) of the MV Act.

3. The scope and ambit of Section 170 of the MV Act has been explained and laid down by the Apex Court in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, In that case, interpreting Section 170 of the MV Act the Apex Court says that "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 and which should be a 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 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 1, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

From this it is clear that joining the Insurance Company as a party to the proceeding by the claimant is for the purposes of getting the award against the Insurance Company along with the owner of the vehicle and the driver of the vehicle, as the case may be, and for enforcement of the statutory liability on account of the contract of insurance. That cannot be treated as joining, as party, for the purpose of the proceeding u/s 170 of the Act. Impleadment of the Insurance Company as a party to the proceeding from the beginning, before the Tribunal, would not take away the right of the Insurance company to move an application seeking permission of the court to defend the claim made by the claimant on all grounds available under the Act, including the defence available to the Insurance Company u/s 149(2) of the Act.

4. When an application is filed by the Insurance Company u/s 170 of the Act, a decision by the Claims Tribunal, has to be reached as to whether there is a collusion between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim. If the Insurance Company satisfies the Tribunal on either of the questions, the Tribunal shall by a reasoned order allow the insurer to contest the matter, as if the contest is by the owner of the vehicle, apart from the defence available to the Insurance company under the provisions contained under Sub-section (2) of Section 149 of the Act. The Tribunal has no jurisdiction

or authority to throw away the application filed by the Insurance Company u/s 170 of the Act simply on the ground that the Insurance Company has already been made a party to the proceeding. It is now settled position that an insurer can contest the proceedings before the Motor Accident Claims Tribunal only on any of the grounds prescribed u/s 149(2) of the Act and unless a specific order is passed by the Tribunal u/s 170, the insurer cannot contest the claim on grounds other than the grounds mentioned in Sub-section (2) of Section 149 of the Act. Before exercising jurisdiction u/s 170, of giving permission to the Insurance Company to contest the case on all grounds, the Tribunal has to record the findings about collusion between the claimant and the owner of the vehicle or the refusal by the owner of the vehicle to contest the claim in fact and in law. The Tribunal has to find out from the proceeding taken up before it whether the owner of the vehicle is contesting the claim of the claimant. Simply filing of the written statement by the owner of the vehicle admitting the claim of the claimant or not denying the allegations made in the claim petition would not mean that the owner of the vehicle is contesting the claim of the claimant. Order u/s 170 of the Act requires application of the mind to the facts of the case before the Tribunal, before order is passed by the Tribunal, The effect and reach of the order u/s 170 of the Act would be ? the Insurance Company steps into the shoes of the owner of the vehicle. Rejection of the application of the Insurance Company on the ground that the insurer was already a party to the proceeding and, therefore, cannot be permitted to contest the case, is per se illegal.

5. The practice adopted by the Claims Tribunal in passing the cyclostyle order on an application u/s 170 of the Act cannot be appreciated. The Tribunal has to pass an order in each and every case on application of mind to the facts of each case.

6. For the aforesaid, the order passed by the Claims Tribunal is set aside and the matter is remanded back for re-consideration of the application u/s 170 of the Act filed by the petitioner Insurance Company in accordance with law.

7. The petition stands disposed of.