
(1993) 12 MP CK 0010
In the Madhya Pradesh High Court
Case No : C. Rev. No. 432 of 1993

United India Insurance Co. Ltd.

APPELLANT

Vs

Shamimbanoo and Others

RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (1994) 2 ACC 648 : (1994) 79 CompCas 549

Hon'ble Judges : Asha Ram Tiwari, J

Bench : Single Bench

Advocate : S. Dandawate, for the Appellant;

Judgement

A.R. Tiwari, J.—This revision petition presented u/s 115 of the Code of Civil Procedure, 1908 (for short, "the Code"), is directed against the order dated September 29, 1993, passed by III Additional Member, Motor Accidents Claims Tribunal, Dewas, in Claim Case No. 6 of 1990 thereby dismissing two applications moved under Order 13, Rule 10 and Order 16, Rules 1 and 2 of the Code by the applicant of this case.

2. Briefly stated the facts of the case are that NA has filed the claim case for the award of compensation. In this case, the owner and driver of the vehicle insured with the applicant remained ex parte and did not contest the claim. The applicant wanted to contest the same on the grounds available to the aforesaid persons in terms of Section 170 of the Motor Vehicles Act, 1988 (for short, "the Act"). The aforesaid provision contained as under :

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

(a) there is collusion 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 claims, shall be impleaded as a party to the proceeding 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."

The Tribunal, however, disallowed the prayer on the grounds of the averments made in the written statements presented by the applicant.

3. I have heard Shri Dandawate, learned counsel for the applicant.

4. Having heard learned counsel, I am satisfied that the aforesaid approach is not in conformity with the law as stated u/s 170 of the Act and as such the Tribunal has failed to exercise jurisdiction vested in it by law. The error in procedure fraught with material consequences can be corrected even without hearing the other side because no right or liability is being adjudicated in such exercise.

5. The order is thus clearly interferable and subvertible.

6. The revision petition is thus allowed and the order is reversed in the sense that the applications submitted by the applicant are allowed and the Tribunal shall permit the applicant to lead evidence in exercise of its right to contest the claim on all the grounds that are available to the persons against whom the claim case was made.

7. Liberty is granted to the other side to apply for review of the order of this court in case it considers itself aggrieved by the same in any way within a period prescribed under the law.

8. The revision petition is thus, disposed of finally in the terms indicated above.

9. The applicant shall place a certified copy of this order before the Tribunal for further action as directed.