
(2003) 09 DEL CK 0003

In the Delhi High Court

Case No : FAO No. 465 of 2002 and CM No. 938 of 2002

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Bimla Tyagi and Others

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

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

Citation : (2004) 1 ACC 130 : (2005) ACJ 2103 : (2003) 8 AD 45

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : K.L. Nandwani, for the Appellant; J.M. Mittal, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—ADMIT.

2. Matter being short, the same has been heard with the consent of the parties and disposed of by this order.

3. The appellant insurance company has filed this appeal to challenge the award of the Motor Accident Claims Tribunal only on the ground of quantum. The contention of learned counsel for the appellant is that as the Tribunal while assessing compensation in favor of the claimants has ignored settled principles of law, the insurance company has a right to file an appeal to challenge the award. It is submitted that if it is held that appeal is not maintainable, this appeal may be treated as a petition under Article 227 of the Constitution of India.

4. I do not agree with the contentions raised by learned counsel for the appellant. The Supreme Court in a judgment reported as National Insurance Co. Ltd. Versus Nicolletta Rohtagi & O Rs. 2002 (3) ACJ 1950 has held that an insured cannot avoid its liability on any other grounds except those mentioned in sub-Section (2) of Section 149 of the Motor Vehicles Act. It was held that the appeal being a right given by statute, the insurance company cannot file an

appeal to challenge the award of the Tribunal only on the ground of quantum. It was held that right of appeal is not inherent right or a common law right, but it is a statutory right and if the law provides that an appeal could not be filed on limited grounds, the grounds cannot be enlarged on the premises that the insured or the persons against whom claim was made have not filed an appeal. It was observed by the Court that :-

"While enacting sub-Section (2) of Section 149 only specified some of the defenses which are based on conditions of the policy and, Therefore, any other breach of conditions of the policy by the insured which does not find place in sub-Section (2) of Section 149 cannot be taken as a defense by the insurer. If Parliament had intended to include the breach of other conditions of policy as a defense, it could have easily provided any breach of conditions of the insurance policy in sub-Section (2) of Section 149. If we permit the insurer to take any other defense other than those specified in sub-Section (2) of Section 149, it would mean we are adding more defenses to insurer in the statute which is neither found in the Act nor was intended to be included. For the aforesaid reasons, the statutory defenses which are available to the insurer to contest a claim are confined to what are provided in sub-Section (2) of Section 149 of 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds. 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 premises 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. Unless the conditions precedent specified in Section 170 of 1988 Act are specified, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against award on merits, if aggrieved. In any case, where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-Section (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer rest integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award."

5. Since the insurance company does not have a right to appeal to challenge the award of the Tribunal only on the ground of quantum, the law cannot be circumvented by treating this appeal as a petition under Article 227 of the Constitution of India. This appeal being not maintainable is, accordingly, dismissed.