

(2006) 01 GAU CK 0098
In the Gauhati High Court
Case No : MAC Appeal No. 74 of 2002

United India Insurance Co. Ltd.

APPELLANT

Vs

Snehalata Datta and Others

RESPONDENT

Date of Decision : 05-01-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 149(1), 149(2), 170, 171, 173

Citation : (2006) GLT 747 Supp

Hon'ble Judges : T. Vaiphei, J;A.B. Pal, J

Bench : Division Bench

Advocate : P. Gautam, for the Appellant; P.K. Biswas and D.R. Choudhury, for the Respondent

Judgement

A.B. Pal, J.—We have heard Mr. P. Gautam, learned Counsel for the Insurer-Appellant, Mr. P.K. Biswas, learned Asstt. S.G. for the Respondent Nos. 3 and 4 and Mr. D.R. Ghoshdhury, learned Counsel for the Respondent Nos. 1, 2 and 5.

2. The judgment and order dated 30th January, 2002 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala (for short, "the Tribunal") in T.S. (MAC) 137 of 1998 awarding an amount of Rs. 4,82,000/- with interest at the rate of 9% per annum with effect from 16.5.1998, if paid within 3 (three) months from 30.1.2002 failing which at the rate of 14% per annum after expiry of the said period, stands impugned in the present appeal filed by the United India Insurance Company Ltd., the insurer of the offending vehicle.

3. The material facts giving rise to the present proceedings originate from a motor accident which had taken place on 3.11.1997 at about 8 a.m. involving the vehicle, a Commander Jeep TR-01-3464, claiming the life of the Ripon Dutta, aged 21 years, the son of the claimants-Respondents. Following the death of their son, the claim petition was filed by the unfortunate parents for compensation which was finally adjudicated by awarding an amount of Rs. 4,82,000/- after coming to a finding that the monthly income of the deceased

was Rs. 2,500/- and choosing 16 as the correct multiplier in consideration of the age of the victim. Though the Appellant herein, being the insurer filed a written objection before the learned Tribunal, the witnesses produced by the claimants-Respondents were neither cross examined nor was any evidence adduced in support of the defence taken by the insurer. No permission was sought and obtained by the insurer u/s 170 of the Motor Vehicles Act in order to enable it to take all the grounds to contest the claim which are available to the insured.

4. Being aggrieved by the impugned judgment and award and the rate of interest in particular, the insurer-Appellant herein has filed the present appeal taking several grounds which are mostly relatable to appreciation of evidence by the learned Tribunal. The factual position regarding the accident, involvement of the said vehicle and death of claimants' son being undisputed, the controversy in the limited compass comes to the only question whether the appeal by the insurer on the grounds other than those enumerated in Sub-section (2) of Section 149 of the M.V. Act is maintainable at all. Mr. Chowdhury, learned Counsel for the claimants-Respondents has raised an initial strong objection of maintainability of this appeal submitting that the grounds of challenge do not fall within the limits of Section 149(2) of the Act. In support of this submission he placed strong reliance on the decision of the Supreme Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, Dealing with the question about the grounds available to an insurer to file an appeal against the award of the Tribunal, the Apex Court has made the following observations in para 4 which are quoted below:

4. It is not disputed that u/s 173 of the Act, an insurer has right to file an appeal before the High Court on limited grounds available u/s 149(2) of the Act. However, in a situation where there collusion between the claimant and the insured or the insured does not contest the claim and further, if the Tribunal does not implead the insurance company to contest the claim, in such a situation 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 merit, in that case it is open to the insurer to file an appeal against the award of the Tribunal on merits. Thus, in such a situation, the insurer can question the quantum of compensation awarded by the Tribunal.

5. It would appear from the above that an insurer can file an appeal only on the limited grounds available in Sub-section (2) of Section 149 of the M.V. Act. The said sub-section provides as follows:

Section 149(2). No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice though the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing

of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) That there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) A condition excluding the use of the vehicle--

(a) For hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) For organized racing and speed testing or

(c) For a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) Without side-car being attached where the vehicle is a motor cycle; or

(ii) A condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified or holding or obtaining a driving licence during the period of disqualification; or

(iii) A condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) That the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

6. Evidently, in the present appeal none of the aforesaid grounds has been taken by the Appellant-insurer for assailing the judgment and award of the learned Tribunal though Mr. Gautam, learned Counsel for the Appellant has strongly urged that in several other decisions of the Apex Court, it has been provided that if the insured fails to file an appeal; it would be permissible for the insurer to file appeal on grounds other than those enumerated in Section 149(2) of the M.V. Act. The decision on which Mr. Gautam has placed reliance is admittedly prior to *Sadhana Lodh* (supra) and it has been brought to our notice that the ratio laid down in *Sadhana Lodh* (supra) has been reaffirmed by the Apex Court only recently in *Milan Rani Saha v. New India Assurance Co. Ltd. and Ors.* in Civil Appeal No. 7409 of 2005. The decision of the Apex Court in that appeal reiterating its earlier decision is quoted below:

The Motor Accident Claims Tribunal (for short, "the Tribunal") passed an award. Challenging the same the Assurance Company (for short, "the Company") filed First Appeal No. 65 of 1997 before the High Court which was dismissed on 22.9.1998 on the ground that the same was not maintainable. Apart from filing the appeal, the Company also filed a writ petition bearing Civil Rule No. 150/1997 which was allowed and the matter was remitted to the Tribunal by order dated 29.1998. Against said order, a writ appeal was filed which has been dismissed. Learned Counsel appearing on behalf of the Appellant submitted that

when an appeal filed by the Company was not maintainable and rightly dismissed, the High Court should not have entertained the Petitioner under Article 227 of the Constitution of India, allowed the same and remitted the matter to the Tribunal. Reliance in this connection has been placed on the case of *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, In our view, the present case is squarely covered by the aforesaid decision of this Court, as such the High Court was not justified in entertaining the writ petition and passing order of remand therein.

7. Upon careful perusal of the materials on record, particularly the grounds taken in the appeal and considering the rival submissions, we are of the considered view that if the said grounds taken in the appeal are placed on the anvils of the principles laid down by the Apex Court in the above noted cases, this appeal cannot be accepted on ground of maintainability alone.

8. At this juncture, Mr. Gautam, learned Counsel for the insurer-Appellant has advanced a submission that the learned Tribunal has awarded interest @ 9% and penal interest @ 14% per annum which is not only very high but also not in term with Section 171 of the M.V. Act as the said provision has not contemplated any penal interest. A plain reading of the said Section would go to show that the word "penal" is absent there. According to Mr. Gautam it is not within the competence of the learned Tribunal to fasten the insurer with interest and a penal interest. In view of the limited scope of the present controversy we do not feel inclined to enter into the question for detailed examination, moreso for the reason that Mr. Chowdhury, learned Counsel for the claimants-Respondents promptly agreed to forego the penal interest altogether if the entire amount of compensation with interest @ 9% per annum is paid within a period of two months. As Mr. Gautam has readily accepted this condition, we provide on consent that the entire amount of compensation after adjusting the sum already paid, if any, together with interest for the period the amount or part of it remaining unpaid at the rate of 9% per annum from the date of presentation of the claim petition shall be paid by the insurer-Appellant to the claimants-Respondents within a period of two month from the date of passing this order. The impugned judgment and order shall, accordingly, stand modified to the above extent and subject to such modification this MAC appeal is closed. No costs.