

(2008) 06 MAD CK 0146
In the Madras High Court
Case No : C.M.A. No. 1074 of 2002

United India Insurance Co. Ltd., Cuddalore	APPELLANT
Vs	
P. Balasubramanian and Daivanayaga Reddiar	RESPONDENT

Date of Decision : 12-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166(i), 170

Citation : (2008) 06 MAD CK 0146

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : M.B. Gopalan, for the Appellant; V.M. Ravichandran and Mr. R. Satishkumar for R1, for the Respondent

Judgement

P.R. Shivakumar, J.—On an application filed u/s 166(i) of the Motor Vehicles Act by the first respondent herein, the Tribunal awarded a sum of Rs. 3,91,900/- as compensation which amount was directed to be paid along with an interest at the rate of 9% per annum from the date of petition till realisation. The said award dated 02.03.2001 was passed against the second respondent herein as the owner of the offending vehicle and the appellant herein as the insurer of the said vehicle. Both of them were held jointly and severally liable to pay the said amount to the first respondent/claimant as compensation for the injuries sustained by him in a road accident that took place on 29.03.1997. The second respondent/the owner of the vehicle did not resist the claim before the Tribunal and chose to remain ex-parte. However, the appellant herein, the insurer alone contested the claim. Naturally, the second respondent herein, namely the owner of the offending vehicle evinced no interest in challenging the award passed by the Tribunal. The appellant, which is admittedly the Insurance Company with which the offending vehicle stood insured on the date of accident has come forward with the present Civil Miscellaneous Appeal against the award passed by the Tribunal on the question of quantum of compensation alone.

2. The Learned Counsel for the respondent has raised a preliminary objection

stating that the appeal by the insurance company is not maintainable because no permission u/s 170 of the Motor Vehicles Act had been obtained before the Tribunal for raising the grounds of defence other than those enumerated u/s 149 was obtained and that hence the appeal should be rejected on the said short point itself. The points that arise for consideration in this appeal are

1) Whether the appeal by the insurance company on the question of quantum is not maintainable?

2) Whether the amount awarded by the Tribunal is excessive requiring downward revision?

3. In a catena of cases, it has been repeatedly held that the insurer cannot raise the grounds of defence except those that are enumerated in Section 149 except with the leave of the court u/s 170 of the Motor Vehicles Act. It has also been held that an appeal by the Insurance Company in the absence of such a permission is not maintainable. In the case on hand, there is no material to show that such a permission u/s 170 was either sought for by the appellant before the Tribunal or granted by the Tribunal. The Learned Counsel for the appellant fairly conceded that he could lay his hand on any paper filed along with the appeal memorandum or found in the records submitted by the Tribunal for reference in this appeal, to show that there was such an order passed by the Tribunal according permission to the insurer to raise the grounds of defence available to the owner. this Court also, after going through the records, is not in a position to find any such petition or order. Hence it must be held that there was no such order permitting the appellant Insurance Company to avail the grounds of defence available to the owner of the vehicle. In view of the finding on the first issue that the appeal is not maintainable there is no necessity to go into the second issue. As a necessary corollary, it has to be held that the appeal by the insurer on the question of quantum is not competent and the same deserves to be dismissed on that short ground alone. In the result, this appeal is dismissed. However, there shall be no order as to cost.