(2007) 04 AHC CK 0128

In the Allahabad High Court

United India Insurance Company Ltd. APPELLANT

Vs

Mashooq Ali and Others RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 173

Citation : (2007) 5 ADJ 698 : (2007) 3 AWC 2550 : (2007) 5 RCR(Civil) 683

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This revision is directed against order dated 19.12.1988 passed by Motor Accident Claims Tribunal/A.D.J. Budaun in MAC Case No. 25 of 1986 Ran Sanehi v. Mashooq Ali and Ors. Applicant United India Insurance Company Limited, opposite party No. 4 in the claim petition pending before the court below had filed an application for amendment of its written statement. In the initial written statement, it was admitted that the bus which was involved in the accident was insured with opposite party No. 4. However, through the amendment sought it was stated that another vehicle of the same owner was insured with the applicant and under confusion it was admitted in the initial written statement that the bus in question was insured; but later on it revealed that bus in question was not insured with the applicant. The court below rejected the amendment application through the impugned order on the ground that it amounted to withdrawal of admission.

3. In my opinion the view of the court below is erroneous in law and suffers from error of jurisdiction. The court below refused to exercise the jurisdiction which was vested in it. An admission made under confusion of the facts may very well be explained or withdrawn. There is no doubt that an admission earlier made in the pleading may be explained through amendment. The amendment sought in

the instant case was more in the nature of explanation of the earlier admission than of Withdrawal of admission.

4. Accordingly, in my opinion amendment application was wrongly rejected.

5. Learned Counsel for the respondent has vehemently argued that against order passed by Motor Accident Claims Tribunal Revision u/s 115 C.P.C is not maintainable In division bench authority of this Court reported in Smt Afsari Begum v. Oriental Fire and General Insurance Company 1979 AWC 438 it has been held that such a revision is maintainable. The Supreme Court authority reported in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, cited by learned Counsel for the respondent is not applicable to the facts of the case. In the said authority, it was held that if insurance company u/s 173 of the Motor Vehicles Act 1988 could not file appeal on particular grounds then writ petition also could not be filed by it on the same grounds.

6. Accordingly, revision is allowed. Impugned order is set-aside. Amendment sought by the applicant is allowed on payment of Rs. 1000/-as cost.

7. As the matter is quite old hence the tribunal is directed to decide the case very expeditiously in no case beyond six months from the date of production of certified copy of this judgment. Both the parties are directed to appear before the Motor Accident Claims Tribunal/A.D.J. Budaun on 14.5.2007 on which date cost shall also be paid.