
(2016) 06 KL CK 0026
In the High Court Of Kerala
Case No : W.P. (C). No. 32109 of 2004 (V)

United India Insurance Company Ltd.	APPELLANT
Vs	
Thomas, Kuruvila @ Mon	RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 3 KHC 577 : (2016) 3 KLT 52 : (2016) 4 TAC 171

Hon'ble Judges : Mr. A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Sri. John Joseph Vettikad, Advocate, for the Petitioner; Sri. T.C. Suresh Menon, Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

A. Muhamed Mustaque, J.—The award passed by the Motor Accident Tribunal is questioned in this writ petition by the Insurance Company. Primarily, the issue in this writ petition revolves around the denial of opportunity to the insurance Company to controvert enhanced claim raised by claimant by filing an amendment petition in the claim petition.

2. The proceedings would disclose that after the trial was over on 19.12.2003, the case was posted on 23.12.2003. On that day, an amendment petition filed on 19.12.2003 was allowed. The Tribunal pronounced the judgment on 30.12.2003. Normally, an amendment which is merely in the nature of quantification of the amount would not have an impact upon the contentions raised by the Insurance Company. However in this case, the Insurance Company was granted a leave under Section 170 of the Motor Vehicles Act to contest on all grounds.

3. The amendment in this context has significance in this case as the amendment in fact is sought to recover the entire loss suffered consequent upon a damage occurred to a motor vehicle due to accident. The total loss suffered by the owner of the car was around Rs. 1,14,423/-. He claimed insured amount under

comprehensive policy from the New India Assurance Company Ltd. They gave Rs. 91,150/-. The claim was laid against to recover a sum of Rs. 15,273/-. However, by way of an amendment a claim for Rs. 95,000/- was raised. The petitioner Insurance Company, the insurer of the tortfeasor was not given an opportunity to contravert this amendment by filing an additional statement. The case put forward in this writ petition is that once the owner of the vehicle was allowed to recover the amount under the comprehensive policy, he cannot demand the same amount from the MACT as against the claim. The learned counsel for the petitioner reply upon the judgment of this Court in National Insurance Company Ltd. v. Akber Badsha [2015 (4) KLT 442]. Therefore it is submitted that the foundation of amendment is rest on the entitlement and not on mere quantification.

4. Per contra, the learned counsel for the claimant before the MACT, relying upon the judgment in Sadhana Lodh v. National Insurance Co. Ltd. [2003 (2) KLT 47 (SC)] submits that this Court cannot interfere with the award even to correct error of law committed by the court below. The relevant portion of the judgment of the Hon"ble Supreme Court is as follows:

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order to correct errors of law in the decision."

5. As rightly pointed out by the learned counsel for the claimant that this Court normally need not interfere with the award of the Tribunal by invoking power under Article 226 of the Constitution of India, as the insurer is having an alternate remedy by filing an appeal under Section 173 of the Motor Vehicles Act. However, this Court is of the view that this writ petition has to be allowed for more than one reason. First of all, this writ petition was entertained in the year 2004 and more than a decade had elapsed. At this time, relegating a party to alternative remedy would be unjust. Secondly, what is questioned in this writ petition is not a decision but the decision making process exercised by the Tribunal. In the sense, a jurisdictional error committed by the Tribunal while disposing the matter. As rightly pointed out by the learned counsel for the claimant this Court cannot interfere with the decision even on error of law. However, this Court would be justified in interfering with the decision making process led to the decision. On 23.12.2003 when the amendment petition was allowed, the Tribunal ought to have given an opportunity to the Insurance Company to file an additional statement in the matter raising the contentions. The contentions now put forward in the writ petition, certainly would have found

a place if such an opportunity was given to the petitioner. These contentions are not mere objection to the quantification but the contentions essentially related to the entitlement for the compensation by the claimant. In that view of the matter, this Court is of the view that the Tribunal committed jurisdictional error by not allowing the Insurance Company to file an additional statement. Therefore, the impugned award has to be set aside by giving opportunity of filing an additional statement in the matter to the Insurance Company. Accordingly, the impugned award is set aside. The parties are directed to appear before the Tribunal on 30.06.2016. Thereafter the writ petitioner/the Insurance Company shall file a statement within two weeks and the Tribunal shall dispose the writ petition before 31.08.2016. The registry shall send back the records forthwith.