Delhi High Court United India Insurance Co. Ltd. vs Mrs. Patricia Jean Mahajan & ... on 13 March, 2001 Equivalent citations: 2001 ACJ 1051, 2001 IVAD Delhi 252, 90 (2001) DLT 533, 2001 (58) DRJ 668 Bench: B Khan, M Siddiqui ORDER Khan, (J) 1. Dr. Sudesh Mahajan, a practicing specialist Doctor in Naphrology, settled in America and running his own hospital there, was on his way to Jaipur Along with his two brothers in a Maruti car which was allegedly hit on the rear right side by a truck trawler coming from the opposite direction resulting in his death. His LRs (respondents no.1 to 6) filed claim suit (no. 325/1995) impleading drivers/owners and Insurers of both vehicles as party-respondents, claiming compensation of Rs.54 crores and odd from them on the ground that annual income of deceased was U.S.$9 lakhs or so. They however, alleged and attributed rash driving and negligence to trawler driver Bal Kishan. 2. All respondents filed their respective written statements, with one group blaming the other. But Tribunal framed two issues one related to alleged rash and negligent driving of trawler driver and the other on determination and computation of compensation. 3. The claimants (R.1-6) examined only two witnesses (PW-1) widow of the deceased Doctor and (PW-2)-car driver Gulsher Ahmed. The widow confined her testimony to the income and earning of the deceased and the car driver deposed about the manner in which accident had taken place. Respondents 7-8 trawler driver and its owner appeared as their own witness. They denied allegations of car driver and shifted blame on him. 4. Appellant then filed an application under Section 149 and 170 of the M.V. Act on 12.8.1997 seeking permission to defend the claim petition on merits, on the plea that trawler driver and owner had failed to contest the claim effectively and to render by assistance or co-operation even when they were called upon to do so and that it had reason to believe that they were not interested in the proper conduct of the claim petition as they had not adduced sufficient independent evidence. This application was opposed by respondents. But Tribunal allowed it on the ground that appellant had reserved a right in its policy to defend the claim on behalf of insured which plea was taken by it in its written statement and that it has also got the accident investigated through an independent investigator, whose testimony could be crucial in the case if application was allowed. Pursuant thereto appellant examined seven witnesses, vis.: (1) RW-3/1 Sh.Rajinder Anand (photographer), (2) RW-3/2 Sh.A.K.Sharma (Engineer from the Maruti Udyog Ltd.), (3) RW-3/3 Dr.S.Velmurugam (Engineer from Central Road, Research Institute), (4) RW-3/4 Sh.G.L. Yadav, Investigator, (5) RW-3/5 Ex. Inspector Triloki Nath Sharma, (6) RW-3/6 Sh. Bhoop Singh, and (7) RW 3/7 Sh. Gajraj Singh, two dhaba owners claimed to be eye witnesses. 5. Tribunal on appraisal and appreciation of evidence answered the first issue related to negligence in favor of claimants (R.1-6) and against appellant and Respondents 7 and 8. It did so after it found that driver and owner of offending trawler and denied car driver's allegations in generalized terms and had failed to put forward their own version of the accident. It also noticed that their story that car driver was responsible for the accident was not taken by them in their written statement, not did they cross examine the car driver on this. It also found that they had failed to examine two material witnesses-one khalasi

and the second trawler driver who accompanied the driver of offending vehicle at the relevant time. It accordingly concluded that trawler driver's version was an after thought and concocted and his evidence unreliable and unworthy. 6. Tribunal then dealt with other seven witnesses of appellant and after analysing the statement of each found that none of them had attributed any negligence or rash driving to car driver. It also pointed out that after appellant was allowed to contest the claim on merits, it had not thought it proper to amend its written statement and take up the plea of negligence by car driver. It also appreciated that two dhaba owners (RW 6 & 7) had reached the place after the accident and therefore could not be regarded as eye witness. 7. The tribunal on the contrary appreciated car driver's evidence and found it truthful for the reasons given by it and held that the accident was caused because of rash and negligent driving on the part of trawler driver Bal Kishan. It then proceeded to assess the compensation and for this relied upon the income tax returns filed by widow of deceased for 1991-94 and attested by Consulate General of India at Chicago. Since no rebuttal evidence was led by appellant or respondents 7 and 8 in this regard, it assessed carry home salary of deceased at U.S. $ 3,09,204, deducted 2/3rd out of this for his self expenses to work out loss of dependency at $1,03,068 and applied a multiplier of 7 to it to determine compensation at $ 7,21,476. It then deducted $3,22,900 on account of social security benefits and insurance amount received by respondents 1-4 and awarded compensation of Rs.1,19,57,880/-. 8. Appellant has filed this appeal primarily to seek over turning of Tribunal's finding that trawler driver was negligent and responsible for the accident. The determination of income/earning of deceased is also challenged on the ground that this income tax returns could not constitute the basis as these were not proved in accordance with rules of evidence and could not be regarded as legally admissible evidence. 9. On the first issue, it is submitted that trawler driver and owner had denied allegations of car driver and had attributed negligence to him but Tribunal had failed to frame an issue on this and on the contrary had ignored and disregarded appellants evidence pointing to car drivers negligence and rash driving. L/C for appellant, Mr. Suri took me through the statements of these witnesses to urge that Tribunal had failed to consider and appreciate their evidence which suggested that accident had occurred on the curve of the road and that car driver had crossed the middle line to hit the trawler rather than the other way round. He also complained that appellant had filed an application before Tribunal on 11.11.1997 for spot inspection which was also not considered. He pointed out the discrepancies in the site plan prepared by police which did not indicate any curve existing on the road and wanted it to be discarded and substituted by the site plan prepared by the private investigator appointed by appellant. He lastly contended that income of deceased was wrongly assessed on the basis of the Income Tax Returns which were not proved by anyone before the court to constitute legally admissible evidence. 10. Respondents 1-6 have taken a preliminary objection to the maintainability of this appeal. According to them this appeal was not competent because appellant had failed to take any of the statutory defenses available to it under Section 149 of M.V.Act and therefore it could not be treated to be a

person aggrieved to file this appeal. Nor had it satisfied requirements of Section 170 to obtain Tribunal order dated 30.9.1997 which was ad on the face of it because it had failed to record its satisfaction on any alleged collusion between claimants and Respondents 7 and 8 which was a prerequisite. In other words it is submitted that appellant could maintain the appeal on wider defenses only on seeking a proper and valid leave of Tribunal for this under Section 170. But since it had failed and since Tribunal order dated 30.9.1997 was parse invalid for falling short of requirement under Section 107, this appeal was to be thrown out as incompetent. Reliance in this regard is placed on judgment on the Supreme Court in Shankaraya Vs. United Insurance laying down that the Insurer had a limited statutory defense available to contest a claim for compensation. Beyond that it could enjoy a wider defense on merits only in accordance with the procedure and requirements provided by Section 170 of MV Act. It would be unnecessary to extract provisions of Section 149 which provide for specific statutory defenses that are available to the Insurer. But it would be advantageous to reproduce the relevant portion of Section 170 for better appreciation of preliminary objection raised which reads thus:- "170. Impleading insurer in certain case-Where in the course of any inquiry, the claims Tribunal is satisfied that- (a) there is collusion between the person making the claim and the person against whom the claim is made, or (b) the person against whom claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be imp leaded as a party to the proceeding and the insurer so imp leaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the persons against whom the claim has been made." 11. As would be evident from its heading this Section provides for impleadment of Insurer in certain cases. Tribunal could order such impleadment where it felt satisfied that there was a collusion between the claimant/s or such person/s against whom a claim was raised or where such person/s had failed to contest the claim. Therefore, one of the crucial conditions to be satisfied by the Insurer for seeking impleadment and for permission to contest the claim on wider defenses, in addition to our apart from statutory defenses made available under Section 149 is that the insurer must allege a collusion between the claimant/s and the person/s against whom claim is made or it must show that such person/s had failed to contest the claim and Tribunal must record its satisfaction on either count. Then only it could implead the insurer as a party to the proceedings and allow it to contest the claim on all or any of the defenses available to the insured and other person/s against whom claim was made. Where neither of the requirements was satisfied either by Insurer or by Tribunal exercise of power under Section 170 would be a nullity. 12. Needless to emphasise that an Insurer had only limited statutory defenses available under Section 149. If it wanted to take up more defenses, it could do so only on satisfying requirements provided in Section 170 and if it failed, it could not be allowed to contest the claim on wider defenses through an appeal on the basis of Tribunal order under Section 170 which is proved wrong for not being in conformity with its provisions. In the present

case, Tribunal order dated 30.9.1997 obtained by appellant falls short of the Tribunal requirement on the face of it and it could not provide any crutches to sustain this appeal. A perusal of its application shows that it proceeded on the plea that insurer and driver of offending trawler were not interested in proper conduct of the claim and put forward the best evidence and that it had reserved the right to take all defenses available to the insurer in its policy. It does did not contain any allegation of collusion between claimants and persons against whom claim was made or that they had failed to contest the claim. On the contrary it was on record that they had filed their written statement and had also recorded their statements. There is no clue that else was required of them which they had failed to do or perform. Apart from this, could Tribunal order dated 30.9.1997 be justified because appellant had reserved its right to take all defenses available to insured in its policy. Appellant is drawing support for this from . Even if it was assumed that reservation of wider defenses in the Insurance policy was good enough, it would remain to be seen whether it would still hold good after enactment of Section 170. In my opinion it would not because it would otherwise render provisions of Section 170 redundant. Therefore all told, preliminary objection taken by respondents 1-6 casts a thick cloud on the maintainability of this appeal which was liable to be rejected for this alone. But even otherwise if it was tested on merits also it would meet the same fate. 13. Adverting to merits, appellant's case put at its best is that Tribunal had ignored and overlooked its evidence, oral and documentary which proved that car driver was responsible for the accident and on the contrary had accepted the sole testimony of car driver to hold that trawler driver was driving recklessly and negligently to cause the accident. This stand is sought to be supported by the statements of some of its witnesses including a photographer and private investigator, both engaged by it deposing or showing that there was a curve on the road which was not borne by police site plan and which by itself indicated that car driver had come on this, crossed the middle line and hit the trawler. 14. It must be pointed out that at the very outset that this is not a case where Tribunal could be charged of ignoring or overlooking any material evidence on record, least of all that of Appellant. It had on the contrary, meticulously appraised and evaluated each statement on record to reach its findings and conclusions. I could not come across a single instance where Tribunal had missed to deal with the testimony of witnesses on either side or where it had faltered in evaluating it. It had appreciated the evidence of Trawler Driver, the photographer, the Private Investigator as also two Dhaba owners and had discarded it for valid reasons. Traveler Driver Bal Kishan's testimony was rejected for introducing a new story which he had failed to reflect in his written statement and to confront the claimant's witnesses and that of others because none including the photographer, the Investigator and two Dhaba owner had attributed any negligence to car Driver. It had, therefore, no option but to return a finding against R 7-8 and Appellant on the issue of alleged negligence of Trawler Driver. The submission of L/C for Appellant Mr. Suri that existence of the curve on the record itself suggested that car Driver had come on it, crossed the middle line and hit the trawler was too presumpteous. Firstly because even

if existence of curve was admitted that by itself would not prove that car driver would have crossed the middle line and hit the trawler. It required positive evidence to prove all that but Appellants' witnesses had failed to discharge that burden somehow. 15. Mr.Suri's second contention that site plan prepared by Police was to be discarded because it missed to indicate any curve on the road also does not advance Appellants' case anyway. Even if it was discarded, it would not prove any negligence by the car Driver. The Police site plan could be one of the fractions of evidence and not the basis of Tribunal finding attributing negligence to Trawler Driver. All this stands to aptly summarised by Tribunal as under:- In order to establish that there was negligence and rashness on the part of Gulsher Ahmed and further the fact that he had contributed to the accident, it was imperative on the part of R-1 to R-3 to have led positive evidence to prove the said assertions. No such evidence has been produced on the record of this case. The witnesses examined by learned counsel for respondent no.3 are peripheral in nature and did not give any positive evidence on the facts of this case. It cannot be assumed that since, there was a curve on the road and since Gulsher Ahmed had to negotiate that curve, he had done so at a high speed and had crossed the middle line and gone to the otherside in order to hit a trawler coming from the opposite direction. There is not in iota of evidence to suggest this fact. I am, therefore, of the considered opinion that the evidence led to record by Ld. counsel of R-3 is of no relevance/benefit to the facts of this case." 16. The evaluation of evidence on record could not have been stated in better words and I find myself in complete accord with it and affirm the Tribunal finding that accident was caused due to rash and negligent driving of offending trawler driver. Coming now to assessment of the income of deceased, appellant's sole objection is that claimants had failed to prove his income and that Tribunal had wrongly taken his Income Tax Returns into account for this purpose. Mr. Suri submitted in this regard that Tribunal had fallen in error by formulating its assessment on the basis of these returns even when these were notarised and certified by Consulate General of India. According to him these returns required to be proved strictly according to the rules of evidence and then alone could be taken in account for assessing the income of deceased. 17. The argument appears attractive on the face of it but it does not stand scrutiny and deserves to be rejected for the reasons to follow. 18. It must be pointed out at the very outset that neither appellant nor respondents 7 and 8 have led any evidence to dispute the details of income disclosed by widow of deceased. She had claimed that his income was $ 9 lakhs and had supported this by Income Tax Returns attested by an American Public Accountant and certified by Consulate General of India at Chicago. She could not have possibly done better to prove his income and loss of dependency. Nor could she be expected of to produce witnesses to prove the Income Tax Returns when no objection was taken to these genuineness of these by appellant or respondents 7 and 8. Moreover it is settled by now that Rules of evidence were not required to be followed to the hilt in adjudication of accident claims and in any case when these Income Tax returns were certified by Consulate General of India, these were admissible in evidence without any proof in terms of Section 3(2) of

the Diplomatic and Consular Officers (oaths and Fees) Act, 1947. The relevant provision reads thus:- "(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of the person, or of the official character of that person". 19. The Act as such provides for notarial duties in respect of Indian National and gives statutory authority to Indian diplomatic and consular officers to administer oaths and to affix seal and signature to attest and certify documents of such nationals. Section 3(2) of this Act contemplates that where any such document carried the seal and signatures of the authorised person under the Act, it shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person or of the official character of that person. That should answer appellants objection with regard to proof of Income Tax returns of the deceased which were admittedly certified by the authorised officer of consulate General of India. 20. Therefore, viewed from all angles, I find no scope to disturb the Tribunal finding on negligence of offending trawler driver which I affirm. I also hold that Income Tax returns of the deceased where admissible in evidence without any further proof and constituted a valid basis for assessment of this income and loss of dependency. 21. This appeal resultantly fails and is dismissed.