Shankarayya And Anr. vs United India Insurance Co. Ltd. And Anr. on 16 January, 1998

Equivalent citations: I(1999)ACC497, 1998ACJ513, 1998VIAD(SC)33, AIR1998SC2968, JT1998(4)SC300, (1998)IIMLJ124(SC), (1998)119PLR624, (1998)3SCC140, AIR 1998 SUPREME COURT 2968, 1998 (3) SCC 140, 1998 AIR SCW 2819, 1999 SCC(CRI) 152, 1998 (119) PUN LR 624, (1998) 2 PUN LR 624, 1998 (6) ADSC 33, (1998) 8 SUPREME 579, 1998 ADSC 6 33, 1998 (2) ALL CJ 900, (1998) 4 JT 300 (SC), 1998 (4) JT 300, (1998) ILR (KANT) 2837, (1998) 8 SCT 579, (1998) 2 TAC 379, (1999) 1 ACC 497, (1999) 1 CIVLJ 314, (1998) 2 MAD LJ 124, (1998) 3 RAJ LW 407, (1998) 3 RECCIVR 238, (1998) 3 ICC 250, (1998) 1 ACJ 513, (1998) 33 ALL LR 639, (1998) 2 APLJ 17, (1998) 4 CIVLJ 227, (1998) 3 MAH LJ 426, (1999) 1 MAHLR 218, (1998) 4 CURCC 119, (1998) 4 ALLMR 312 (BOM), (1998) 3 BOM CR 554

Bench: S.B. Majmudar, S.P. Kurdukar

ORDER

1. Leave granted. The appeal is taken up for final hearing as the appellants-claimants and the respondent-Insurance Company, which is the only contesting party in this appeal, are represented by their counsel. Counsel for respective parties were finally heard.

2. The short question is whether Respondent 1, Insurance Company could have filed an appeal in the High Court against the award of the Motor Accidents Claims Tribunal and got the quantum of compensation reduced when the insured had not filed such appeal and when Respondent 1 Insurance Company had not moved the Tribunal under Section 170 of the Motor Vehicles Act, 1988 for getting the right to contest the proceedings on merits. It may be stated that the appellants filed a claim petition in 1989 before the Motor Accidents Claims Tribunal, Gulbarga for death on account of motor accident of their 18-year-old son. The accident occurred on 4-9-1989. It was caused by a jeep which was owned by one Om Prakash, Respondent 2 in this appeal. The same was being driven by original Respondent 2 Chandrashekher Pattan and the offending vehicle was insured with Respondent 1, Insurance Company. In the claim petition though the owner and driver appeared, they did not think it fit to file written statement. Written statement was filed only by Respondent 1 Insurance Company. In the written statement it was stated that in case the owner-insured did not choose to appear in these proceedings and contest, then the Insurance Company desired to get proper orders under Section 170 of the Motor Vehicles Act. The Insurance Company for reasons best known to it did not think it fit to apply under Section 170 of the Act for getting permission of the Court on proof of relevant conditions mentioned in the section for contesting the proceedings on merits. Consequently, the defence of the Insurance Company was confined to statutory defence only. It is true that the claimants did not object to the Insurance Company joining issues on merits in the

Tribunal. Ultimately the Tribunal passed an award against the driver, owner and the Insurance Company to the extent of Rs 1,05,000. That award became final against the owner and the driver. However, Respondent 1, Insurance Company carried the matter in appeal and submitted in appeal that the compensation awarded was on a higher side. Meaning thereby, the appeal was moved only on the merits of the compensation claim. That appeal was allowed by the High Court by the impugned judgment and the compensation was reduced to Rs 60,000. It is this reduction of the compensation by the High Court that is the subject-matter of the present appeal.

3. Learned counsel for the appellants was right when she contended that as the first respondent Insurance Company did not move under Section 170 of the Motor Vehicles Act, it was not entitled to challenge the compensation on merits and only statutory defence was available to the Insurance Company. It is true that Respondent 1 was allowed to contest on merits despite not following the procedure laid down under Section 170 of the Act and as a result the compensation claim of Rs 2,60,000 was not granted in full and only Rs 1,05,000 was granted to the claimants. To that extent on the contest of the Insurance Company on merits this much benefit was made available to the Insurance Company and that, of course, could not be gone behind by the claimants as the claimants were satisfied with the award of the Tribunal not decreeing their full claim. Therefore, the only contest in the appeal was by the Insurance Company which wanted the award of the Tribunal to be further reduced and that is exactly what the High Court has done. In our view, the Insurance Company was clearly incompetent to file an appeal on the merits of the claim before the High Court. In this connection, we may profitably refer to Section 170 of the Motor Vehicles Act, 1988, which reads as under:

> "170. Impleading insurer in certain cases.-Where in the course of any inquiry, the Claims Tribunal is satisfied that-
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> (a) there is collusion between the person making the claim and the person against whom the claim is made, or
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> (b) the person against whom the 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 implicated as a party to the proceeding and the insurer so impleaded 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 person against whom the claim has been made."

4. It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had "joined Respondent 1, Insurance Company in the claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was

not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, Respondent 1, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

5. It was not disputed before us that Respondent 1, Insurance Company on account of the contract of insurance is liable to comply with the entire award amount of compensation. That precisely is the reason why the insured has not thought it fit to challenge the compensation in these proceedings. Under these circumstances, Respondent 1, Insurance Company will have to satisfy the entire award amount as directed by the Tribunal. If any part of the said amount remains still unpaid, the said balance amount shall be deposited by Respondent 1 in the Tribunal within eight weeks from the receipt of the copy of this order at its end. Office shall send a copy of this order to first respondent, Insurance Company.

6. The appeal is accordingly allowed, the appellate order of the High Court is set aside and the award of the Tribunal is confirmed. No costs.