Chinnama George & Ors vs N.K. Raju & Anr on 6 April, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1565, 2000 AIR SCW 1321, 2000 UJ(SC) 2 925, (2000) 1 ACC 577, 2000 ALL CJ 2 903(2), (2000) 39 ALL LR 492, (2000) 3 ANDHWR 208, (2000) 101 COMCAS 252, (2000) 2 KER LT 155, (2001) 2 MAD LW 53, (2000) 1 ACJ 777, (2000) 2 ALL WC 1596, (2000) 2 PUN LR 1, (2000) 3 SCALE 106(2), (2000) 3 CIVLJ 846, 2000 (4) SCC 130, (2000) 2 ALLMR 690 (SC), (2000) 3 SUPREME 136, (2000) 2 RAJ LW 272, (2000) 2 TAC 207, (2000) 3 ANDHLD 121, (2000) WLC(SC)CVL 346, (2000) 2 CURCC 109, (2000) 4 JT 207 (SC), 2000 SCC (CRI) 780

Author: D.P. Wadhwa

Bench: D.P.Wadhwa

PETITIONER:
CHINNAMA GEORGE & ORS.

Vs.

RESPONDENT:
N.K. RAJU & ANR.

DATE OF JUDGMENT: 06/04/2000

BENCH:
D.P.Wadhwa, D.P.Mohapatro

JUDGMENT:

D.P. WADHWA,J.

Appellants are widow and minor children of George who died in a motor vehicle accident which occurred on May 28, 1989. George was riding a scooter. It was hit by a bus driven by Mohanan, the third respondent in a rash and negligent manner. Bus was owned by N.K. Raju, the first Respondent. The insurer was the Oriental Insurance Co. Ltd., the second respondent. Appellants are aggrieved by the judgment dated January 6, 1998 of the Division bench of the High Court of Kerala which reduced the amount of compensation arising out of the accident from Rs.3,78,000/- awarded by the Motor Accident Claims Tribunal (for short, the 'Claims Tribunal') to Rs.2,27,320/-. George, the deceased was 36 years of age at the time of the accident. His income was Rs.2,000/- per month. He was an actor-cum- secretary of a leading drama troupe which was staging drama in India and abroad. After deducting his personal expenses, his income was determined at Rs.1600/- per month

by the Claims Tribunal. Applying multiplier of 20, compensation amount was fixed at Rs.3,78,000/- by the Claims Tribunal. The Claims Tribunal gave an award dated 10.1.1991 for Rs.3,78,000/- with interest @ 12% per annum from September 1, 1989 with cost. The owner of the Bus, N.K. Raju, and the Insurer filed appeal against the order of the Claims Tribunal under Section 173 of the Motor Vehicles Act, 1988 (for short, the 'Act'). Section 173 entitles any person aggrieved by an award of the Claims Tribunal to prefer an appeal to the High Court. In view of the decision of the Claims Tribunal, it could not be said that N.K. Raju, the owner could be an aggrieved person for him to file any appeal against the award. We have gone through the impugned judgment of the High Court. There is no mention in whole body of the judgment as to how N.K. Raju felt aggrieved and what was his argument raised against the award of Claims Tribunal. There is no challenge to the finding that the bus was being driven by the third respondent in rash and negligent manner. Under Section 149 of the Act, it is the duty of the insurer to satisfy the award against the person insured in respect of third party risks. It is not that liability of the insurer in the present case is being disputed. Insurer can defend the proceedings before the Claims Tribunal on certain limited grounds. Sub-sections (1), (2) and (7) of Section 149 of the Act are relevant, which are as under : "149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment. (2) No sum shall be payable by an insurer under sub- section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal, and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:- (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:- (i) a condition excluding the use of the vehicle (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or (b) for organised racing and speed testing, or (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or (d) without side-car being attached where the vehicle is a motor cycle; or (ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or (b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular. (3) to (6) ..... (7) No insurer to whom the notice referred to in sub- section (2) or sub-section (3) has been given shall

be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be."

Admittedly, none of the grounds as given in sub-section (2) of Section 149 exist for the insurer to defend the claims petition. That being so, no right existed in the insurer to file appeal against the award of the Claims Tribunal. However, by adding N.K. Raju, the owner as co- appellant, an appeal was filed in the High Court which led to the impugned judgment. None of the grounds on which insurer could defend the claims petition was the subject matter of the appeal as far as the insurer is concerned. We have already noticed above that we have not been able to figure out from the impugned judgment as to how the owner felt aggrieved by the award of the Claims Tribunal. The impugned judgment does not reflect any grievance of the owner or even that of the driver of the offending bus against the award of the Claims Tribunal. The insurer by associating the owner or the driver in the appeal when the owner or the driver is not an aggrieved person cannot be allowed to mock at the law which prohibit the insurer from filing any appeal except on the limited grounds on which it could defend the claims petition. We cannot put our stamp of approval as to the validity of the appeal by the insurer merely by associating the insured. Provision of law cannot be undermined in this way. We have to give effect to the real purpose to the provision of law relating to the award of compensation in respect of the accident arising out of the use of the motor vehicles and cannot permit the insurer to give him right to defend or appeal on grounds not permitted by law by a backdoor method. Any other interpretation will produce unjust results and open gates for the insurer to challenge any award. We have to adopt purposive approach which would not defeat the broad purpose of the Act. Court has to give effect to true object of the Act by adopting purposive approach. Sections 146, 147, 149 and 173 are in the scheme of the Act and when read together mean : (1) it is legally obligatory to insure the motor vehicle against third party risk. Driving an uninsured vehicle is an offence punishable with an imprisonment extending up to three months or the fine which may extend to Rs.1,000/- or both; (2) Policy of insurance must comply with the requirements as contained in Section 147 of the Act; (3) It is obligatory for the insurer to satisfy the judgments and awards against the person insured in respect of third party risks. These are sub-sections (1) and (7) of Section 149. Grounds on which insurer can avoid his liability are given in sub-section (2) of Section 149. If none of the conditions as contained in sub-section (2) of Section 149 exist for the insurer to avoid the policy of insurance he is legally bound to satisfy the award. He cannot be a person aggrieved by the award. In that case insurer will be barred from filing any appeal against the award of the Claims Tribunal. The question that arises for consideration is : can the insurer join the owner or the driver in filing the appeal against the award of the Claims Tribunal as driver or owner would be the person aggrieved as held by this Court in Narendra Kumar & Anr. vs. Yarenissa & Ors. [(1998) 9 SCC 202]? This Court has held that appeal would be maintainable by the driver or the owner and not by the insurer and, thus, a joint appeal when filed could be maintainable by the driver or the owner. This is how the Court held: - "For the reasons stated above, we are of the opinion that even in the case of a joint appeal by insurer and owner of offending vehicle if an award has been made against the tortfeasors as well as the insurer even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeasor can proceed with the appeal after the cause-title is suitably amended by deleting the name of the insurer."

There is no dispute with the proposition so laid by this Court. But the insurer cannot maintain a joint appeal along with the owner or the driver if defence on any ground under Section 149(2) is not available to it. In that situation joint appeal will be incompetent. It is not enough if the insurer is struck out from the array of the appellants. The appellate court must also be satisfied that a defence which is permitted to be taken by the insurer under the Act was taken in the pleadings and was pressed before the Tribunal. On the appellate court being so satisfied the appeal may be entertained for examination of the correctness or otherwise of the judgment of the Tribunal on the question arising from/relating to such defence taken by the insurer. If the appellate court is not satisfied that any such question was raised by the insurer in the pleadings and/or was pressed before the Tribunal, the appeal filed by the insurer has to be dismissed as not maintainable. The court should take care to ascertain this position on proper consideration so that the statutory bar against the insurer in a proceeding of claim of compensation is not rendered irrelevant by the subterfuge of the insurance company joining the insured as a co- appellant in the appeal filed by it. This position is clear on a harmonious reading of the statutory provisions in Sections 147, 149 and 173 of the Act. Any other interpretation will defeat the provision of sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer.

In the present case we do not find any argument addressed on behalf of the owner of the offending vehicle and the only argument, which the High Court noticed, was that of the counsel for the insurer. That argument was on the quantum of compensation granted to the appellants. That ground is certainly not available to the insurer for the purpose of filing the appeal. We, therefore, hold that the present appeal by the insurer by joining the owner was not competent, as there was no ground available to the insurer to defend the claim petition.

We, therefore, set aside the impugned judgment of the High Court and restore that of the Claims Tribunal. Appellants shall be entitled to cost which we quantify at Rs.10,000/-.

Accordingly, the appeal is allowed.