National Insurance Co. Ltd., ... vs Nicolletta Rohtagi And Ors on 17 September, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3350, 2002 (7) SCC 456, 2002 AIR SCW 3899, 2002 AIHC NOC 12, (2002) 4 ALLMR 874 (SC), (2002) 3 JCR 201 (SC), (2002) 7 JT 251 (SC), 2002 (7) JT 251, 2002 (3) BLJR 2143, 2002 (9) SRJ 330, 2002 (5) SLT 363, 2002 SCC(CRI) 1788, 2002 BLJR 3 2143, 2002 (4) ALL MR 874, 2002 (6) SCALE 569, 2002 (4) LRI 64, (2002) 3 LABLJ 917, (2002) 3 LAB LN 412, (2002) 7 SERVLR 767, (2002) 2 RAJ LR 148, (2002) 6 ANDHLD 1, (2002) 112 COMCAS 257, (2002) 2 ANDHWR 710, (2002) 2 KER LJ 675, (2002) 3 PUN LR 621, (2002) 6 ANDH LT 43, (2002) 3 ACC 292, (2003) 1 SCT 977, (2003) 1 GUJ LH 586, (2003) 1 MAD LJ 11, (2003) 1 MAD LW 151, (2002) 4 PAT LJR 165, (2003) 1 RAJ LW 25, (2002) 4 SCJ 355, (2003) 3 TAC 293, (2002) 6 SUPREME 362, (2002) 4 RECCIVR 464, (2002) 6 SCALE 569, (2003) 1 WLC(SC)CVL 129, (2002) 3 ACJ 1950, (2003) 1 ALL WC 23, (2003) 1 CIVLJ 201, (2002) 4 CURCC 6, (2003) 1 CURLJ(CCR) 440, (2003) 95 CUT LT 157, AIRONLINE 2002 SC 538

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Bench: V.N. Khare, Ashok Bhan

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           CASE NO.:
Appeal (civil)  4292 of 2002

PETITIONER:
NATIONAL INSURANCE CO. LTD., CHANDIGARH

RESPONDENT:
NICOLLETTA ROHTAGI AND ORS.

DATE OF JUDGMENT: 17/09/2002

BENCH:
V.N. KHARE & SHIVARAJ V. PAT1L & ASHOK BHAN

JUDGMENT:
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JUDGMENT 2002 Supp(2) SCR 456 The Judgment of the Court was delivered by V. N. KHARE, J. Leave granted.

The short question that arises for our consideration in this group of appeals is 'where an insured has not preferred an appeal under Section 173 of The Motor Vehicles Act, 1988 (hereinafter referred to

as '1988 Act') against an award given by the Motor Accidents Claims Tribunal (hereinafter referred to as 'Tribunal'), is it open to the insurer to prefer an appeal against the award by the Tribunal questioning the quantum of the compensation, as well as finding as regards the negligence of the offending vehicle'.

Before we proceed further, it is necessary to set out brief facts of the cases, which have given rise to the aforesaid question.

In Civil Appeal No. 5911/2002 @ S.L.P. (Civil) No. 9238/2000, the appellant was grievously injured in a motor vehicle accident on 29.5.1993. He preferred a claim petition before the Tribunal and the Tribunal granted a compensation to the tune of Rs. l ,50,415/ against the insurer and the insured jointly. The insurer was directed to deposit the decretal amount. The insured did not file any appeal. On appeal being filed by the insurer, the High Court reduced the compensation to Rs. 84,375/-. In this appeal, the appellant questioned the maintainability of the appeal preferred by the insurer.

In Civil Appeal No. 4292/2002, an accident took place on 8.8.1995 in which one Anil Kishore Roghtagi died. The dependants of the deceased filed a claim petition before the Tribunal and the Tribunal awarded compensation to the tune of Rs. 13,13,150/- with @ 20% p.a. The appeal preferred against the said award before the High Court by the insurer was dismissed on the ground that no appeal at the instance of the insurer is maintainable as regards quantum of compensation. It is against the said judgment of the High Court, the insurer has preferred this appeal. When this matter came up for hearing before a Bench of this Court, Learned Judges were of the view that since two Benches of this Court comprising of two learned Judges in Rita Devi & Ors. v. New India Assurance Co. Ltd. & Am., [2000] 5 SCC 113 and United India Assurance Co. Ltd. v. Bhushan Sachdeva & Ors., [2002] 2 SCC 265 have taken a contrary view, the matter is required to be decided by a Bench of three learned Judges.

In Civil Appeal No. 5913/2002 @ S.L.P (Civil) No. 10616/2001, identical question of law is involved and the same has been referred to a Bench of three learned Judges. In Civil Appeal No. 5914/2002 @ S.L.P. (Civil) No. 17076/2001, one Rabinder Singh Lehal died in a motor accident. The dependants of the deceased preferred a claim petition before the Tribunal. The Tribunal awarded a compensation to the tune of Rs. 2.70 lakhs in favour of the claimants. In an appeal preferred by the insurer, the High Court held that the insurer cannot challenge the quantum of compensation granted by the Tribunal and in that view of the matter the appeal was dismissed. It is against the said decision, the appeal has been preferred by the insurer and a Bench of this Court has also referred this appeal to be decided by a Bench of three learned Judges.

For deciding the controversy at hand, it is necessary to set out the relevant provisions of the Act.

> "147. Requirements of policies and limits of liability. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which
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> (a) is issued by a person who is an authorised insurer; or

(b) insurer the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required -

(i) to cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle or (ii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand.

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters

may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

> "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
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> (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) [or under the provisions of section 163 A] 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 judgments.
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> (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 of 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:-
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> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions namely:-
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> (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 licensed, 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) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India.

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respect such liabilities-as are required to be covered by a policy under clause (b) of sub-section (f) of section 147, be of no effect.

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(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."

> "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 reason to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded 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."
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> "173. Appeals. (1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:
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> Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent, of the amount so awarded, whichever is less, in the manner directed by the High Court:
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> Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees."

Since one of the appeals arises out of the Motor Vehicles Act, (hereinafter referred to as the '1939 Act'), we may also briefly note the provisions of 1939 Act. Section 96(1) of the 1939 Act corresponds to Section 149(1) of 1988 Act which provides that after the issuance of the certificate of insurance, the insurance company shall satisfy the award or decree passed by the Tribunal against the insured not exceeding the sum assured as if he were the judgment debtor. Section 96(2) of 1939 Act which corresponds to Section 149(2) of 1988 Act lays down that an insurance company can defend the action only on the ground of breach of conditions of the policy referred to in sub-section or on the ground that the policy is void for the reason referred to in the said sub-section. Section 96(6) of the 1939 Act corresponds to Section 149(7) of the 1988 Act and the same provides that the insurance company cannot avoid the liability to any person entitled to benefit of any judgment or award referred to in sub-section (1) except in the manner provided in sub-section (2) of the Act. Chapter VIII of 1939 Act and Chapter XI of 1988 Act have been enacted on pattern of several English statutes which is evident from the report 'Motor Vehicles Insurance Committee 1936-37'. In order to find out the real intention for enacting Section 96 of 1939 Act which corresponds to Section 149 of 1988 Act, it is relevant to trace the historical development of the law for compulsory third party insurance in England. Prior to 1930, there was no law of compulsory insurance in respect of third party rights in England. As and when an accident took place the injured (claimant) used to bring action against the motorist for recovery of damages. But in many cases it was found the owner of the offending vehicle had no means to pay to the injured or dependant of the deceased and in such a situation the claimants were unable to recover damages. It is under such circumstances various legislations were enacted. To meet the situation, it is for the first time 'The Third Parties' Rights Against Insurance Act 1930' was enacted in England. The provision of the said Act finds place in Section 97 of 1939 Act which gave to third party a right to sue directly against the insurer. Subsequently, 'The Road Traffic Act 1930' was enacted which provided for the compulsory insurance of motor vehicles. The provision of the said Act is engrafted in Section 95 of 1939 Act and Section 146 of 1988 Act. It is relevant to notice that under Section 38 of the English Act of 1930, certain conditions of insurance policy were made ineffective so far as third parties were concerned. The object behind the said provision was that third party should not suffer on account of failure of the insured to comply with those terms of the insurance policy.

Subsequently in the 1934, second Road Traffic Act was enacted. The object of the said legislation was to satisfy the liability of the insured. Under the said enactment three actions were provided. The first was to satisfy the award passed against the insured. The second was that, in case the insurer did not discharge its liability the claimant had right to execute decree against the insurer. However, in certain events namely, what was provided in Section 96(2)(a) which corresponds to Section 149(2)(a) of 1988 Act, the insurer could defend his liability. The third action provided for was contained in Section 10(3) of the Road Traffic Act. Under the said provision, the insurer could defend his liability to satisfy decree on the ground that insurance policy was obtained due to misrepresentation or fraud. The said provision also finds place in Section 149(2)(b) of 1988 Act. While enacting the 1939 Act and 1988 Act, all the three actions have been engrafted in Section 96 of 1939 Act and Section 149 of 1988 Act. It may be remembered that neither the 1939 Act nor the 1988

Act conferred greater rights to the insurer than what had been conferred in English law. Thus, in common law, an insurer was not permitted to contest a claim of a claimant on merits i.e. offending vehicle was not negligent or there was contributory negligence. The insurer could contest the claim only on statutory defences specified for in the statute.

We have traced the legislative history of English law as regards liability of an insurer in the event of a motor accident in respect of third party right was not for interpreting Sections 149, 170 and 173 of 1988 Act, but only for showing that while enacting Chapter VIII of 1939 Act or Chapter XI of 1988 Act, the intention of legislature was to protect third party rights and not the insurer.

To answer the question, it is necessary to find out on what grounds the insurer is entitled to defend/contest against a claim by an injured or dependants of the victims of motor vehicle accident. Under Section 96(2) of 1939 Act which corresponds to Section 149(2) of 1988 Act, an insurance company has no right to be a party to an action by the injured person or dependants of deceased against the insured. However, the said provision gives the insurer the right to be made a party to the case and to defend it. It is, therefore, obvious that the said right is a creature of the statute and its content depends on the provisions of the statute. After the insurer has been made a party to a case or claim, the question arises what are the defences available to it under the statute. The language employed in enacting sub-section (2) of Section 149 appears to be plain and simple and there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely, sub-section (2) of Section 149 of 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other conditions of the policy which do not find place in sub-section (2) of Section 149 of 1988 Act. If an insurer is permitted to contest the claim on other grounds it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for.

Sub-section (7) of Section 149 of 1988 Act clearly indicates in what manner sub-section (2) of Section 149 has to be interpreted. Sub-section (7) of Section 149 provides that 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. The expression 'manner' employed in sub-section (7) of Section 149 is very relevant which means an insurer can avoid its liability only in accordance with what has been provided for in sub-section (2) of Section 149. It, therefore, shows that the insurer can avoid its liability only on the statutory defences expressly provided in sub-section (2) of Section 149 of 1988 Act. We are, therefore, of the view that an insurer cannot avoid its liability on any other grounds except those mentioned in sub-section (2) of Section 149 of 1988 Act.

It is relevant to note that the Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149

cannot be taken as a defence by the insurer. If the Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to insurer in the statute which is neither found in the Act nor was intended to be included.

For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds.

Before proceeding further, it may be noticed that while 'The Motor Vehicles Act, 1939' was in force, Section 110-C (2A) was inserted therein in the year 1970 which corresponds to Section 170 of the 1988 Act. The said provision provides that in course of an inquiry of a claim if the Tribunal is satisfied that there is a collusion between the claimant and the insured or the insured fails to contest the claim, the Tribunal for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded 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.

The aforesaid provisions show two aspects. Firstly, that the insurer has only statutory defences available as provided in sub-section (2) of Section 149 of 1988 Act and, secondly, where the Tribunal is of the view that there is a collusion between the claimant and the insured, or the insured does not contest the claim, the insurer can be made a party and on such impleadment the insurer shall have all defenses available to it. Then comes the provisions of Section 173 which provides for an appeal against the award given by the Tribunal. Under Section 173, any person aggrieved by an award is entitled to prefer an appeal to the High Court. Very often the question has arisen as to whether an insurer is entitled to file an appeal on the grounds available to the insured when either there is a collusion between the claimants and the insured or when the insured has not filed an appeal before the High Court questioning the quantum of compensation. The consistent view of this Court had been that the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of offending vehicle.

In Shankarayya and Anr. v. United India Insurance Co. Ltd. and Anr. [1998] 3 SCC 140, it was held that an 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 Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless this procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defences. In absence of the existence of the conditions precedent mentioned in Section 170, the insurance company was not entitled to file an appeal on merits questioning the quantum of compensation.

In Narender Kumar and Anr. v. Yarenissa and Ors. [1998] 9 SCC 202, question arose whether there can be a joint appeal by an insurer and owner of the offending vehicle. It was held that even in the case of a joint appeal by the insurer and the owner of an 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. In the said case, it also held thus:

> "The ground on which the insurer can defend the action commenced against the tortfeasors are limited and unless one or mare of those grounds is/are available, the Insurance Company is not and cannot be treated as a party to the proceedings. That is the reason why the courts have consistently taken the view that the Insurance Company has no right to prefer an appeal under Section 110-D of the Act unless it has been impleaded and allowed to defend on one or more of the grounds set out in sub-section (2) of Section 96 or in the situation envisaged by sub-section 2(A) of Section 110-C of the Act, "

In Chinnama George and Ors. v. N.K. Raju and Anr., [2000] 4 SCC 130, it was held that if none of the conditions as contained in sub-section (2) of Section 149 exists for the insurer to avoid the liability, the insurer is legally bound to satisfy the award and the insurer cannot be a person aggrieved by the award. In such a case, the insurer will be barred from filing an appeal against the award of the Tribunal. It was also held that the insurer cannot maintain a joint appeal along with the owner or driver if defence of any ground under Section 149(2) is not available to it.

In Rita Devi (Smt) and Ors. v. New India Assurance Co. Ltd and Anr. [2000] 5 SCC 113, it was held that the insurer having not obtained permission under Section 170 of 1988 Act, is not entitled to prefer any appeal to the High Court against the award given by the Tribunal on merits.

However, in United India Insurance Co. Ltd. v. Bhushan Sachdeva and Ors. [2002] 2 SCC 265, it was held that where the insured fails to file an appeal to the High Court against the quantum of compensation awarded by the Tribunal, the insurer is entitled to file an appeal as the insured has failed to contest the claim and in that view of the matter, the insurer could be a person aggrieved. This is the only decision which has taken a contrary view to the consistent view of this Court in regard to maintainability of appeal at the instance of an insurer. In our view, the decision in United India Insurance (supra) does not lay down correct view of law for the reasons stated hereinafter.

It was urged by learned counsel appearing for the insurance company that if an insured has not filed any appeal, it means he has failed to contest the claim and that the right to contest include the right to contest by filing an appeal against the award of the Tribunal as well, and in such a situation an appeal by the insurer questioning the quantum of compensation would be maintainable.

We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and

protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied..

For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the person against whom the claim has been made has failed to contest the claim, the tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one Scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act.

This matter may be examined from another angle. The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premise that the insured or the persons against whom a claim has been made has not filed any appeal. Section 149 (2) of 1988 Act limits the insurer's appeal on those enumerated grounds and the appeal being a product of the statute, it is not open to an insurer to take any other plea other than those provided in Section 149(2) of 1988 Act. The view taken in United India Insurance Co. Ltd. v. Bhushan Sachdeva & Ors., (supra) that a right to contest would also include the right to file an appeal is contrary to well established law that creation of a right to appeal is an act which requires legislative authority and no court or tribunal can confer such right, it being one of limitation or extension of jurisdiction. Further, the view taken in United India Insurance (supra) that since the Insurance companies are nationalised and are dealing with public money/fund and to deny them the right of appeal when there is a collusion between the claimants and the insured would mean draining out or abuse of public fund is contrary to the object and intention of the Parliament behind enacting Chapter XI of 1988 Act. The main object of enacting Chapter XI of 1988 Act was to protect the interest of the victims of motor vehicle accidents and it is for that reason the Insurance of all motor vehicles has been made statutorily compulsory. Compulsory Insurance of motor vehicle was not to promote the business interest of insurer engaged in the business of insurance. Provisions embodied either in 1939 or 1988 Act nave been purposely enacted to protect the interest of travelling public or those using road from the risk attendant upon the user of motor vehicles on the roads. If law would have provided for compensation to dependants of victims of motor vehicle accident, that would not have been sufficient unless there is a guarantee that compensation awarded to an injured or dependant of

the victims of motor accident shall be recoverable from person held liable for the consequences of the accident. In Skandia Insurance Co. Ltd v. Kokilaben Chandravadan & Ors. [1987] 2 SCC 654, it was observed thus:

> "In other words, the legislature has insisted and make i t incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the light of the aforesaid perspective. "

We have noticed the legislative development in regard to third party rights in England and found that the object of those legislations was to protect the interest of third party rights. The 1939 Act as well as 1988 Act both were enacted on pattern of English statute with the object to relieve the distress and miseries of victims of accidents and reduce the profitability of the insurer in regard to occupational hazard undertaken by them by way of business activities and not to promote business interests of insurance companies even though they may be nationalised companies.

For the aforesaid reasons, as well as that the learned Judges in United India Insurance Co. Ltd. (supra) nave failed to notice the limited grounds available to an insurer under Section 149(2) of the Act, we are of the view that the decision in United India Insurance (supra) does not lay down the correct view of law.

It was then urged that if there is a collusion between the claimants and the insured or the insured does not contest the claim and the tribunal does not implead the insurance company to contest the claim on grounds available to the insured or the persons against whom claim has been made, or in such a situation when the insurer files an application for permission to contest the claim on merit and the same is rejected or where claimant has obtained an award by playing fraud, in such cases the insurer has a right of appeal to contest the award on merits and the appeal would be maintainable.

We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an

application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-sections (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.

For the aforesaid reasons, the order and judgment under challenge in Civil Appeal No. 5911/2002 @ S.L.P. (Civil) No. 9238/2000 is set aside and appeal is allowed. Civil Appeal No. 4292/2002, Civil Appeal No.5913/2002 @ S.L.P. (Civil) No.10616/2001 and Civil Appeal No. 5914/2002 @ S.L.P. (Civil) No. 17076/2001 are dismissed. There shall be no order as to costs.