Asha And Ors. vs United India Insurance Co. Ltd. And Anr. on 3 September, 2003

Equivalent citations: I(2004)ACC533, 2004ACJ448, [2005(1)JCR135(SC)], (2004)136PLR1, (2008)2SCC774, 2008 (2) SCC 774, AIRONLINE 2003 SC 210, (2004) 1 ACC 533, (2004) ILR (KANT) 2720, (2004) 1 PUN LR 1, (2004) 1 ACJ 448, 2008 (1) SCC (CRI) 561, (2005) 1 JCR 135 (SC)

Author: H.K. Sema

Bench: S.N. Variava, H.K. Sema

ORDER

H.K. Sema, J.

1.This appeal is against an order of the High Court of Karnataka dated 8th February, 2000.

2. On 4th March, 1996 there was an accident between two vehicles in which a person by name Arun Raikar was killed. He was working with the International Airport Authority of India. The appellants filed a claim before the Motor Accident Claims Tribunal. The Motor Accident Claims Tribunal awarded a sum of Rs.10,67,076/-. The Tribunal held that there was contributory negligence and therefore directed that the amount be paid in equal proportion by the owners and insurer of both the vehicles.

3. The respondent (herein) along with the owner of the tempo (one of the vehicles) filed an appeal before the High Court. The High Court, by the impugned judgment, reduced the compensation payable to Rs. 8,79,176/-. The High Court has done this on the basis of a salary certificate which reads as follows:-

> "This is to certify that Shri A.M. Raikar was working as AG 111 in this organisation has been paid the following Pay & Allowances for the month of May, 1995:
>
> | Earnings | Amount | | Deductions | Amount |
> |---|---|---|---|---|
> | Basic | | 3420.00 | CPF (S) | 488.00 |
> | Special Pay | | 70.00 | CPF (Add) | |
> | FDA | | 350.00 | GIS | 3.75 |
> | VDA | | 1040.00 | LIC/GIS | 509.10 |
> | CCA | 100.00 | HRR | | |
> | HRA | 1047.00 | MSPI | 60.00 | |
> | Washing All. | 75.00 | Society | 576.00 | |
> | Conv. | 225.00 | Union | 3.00 | |

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Cant.Sub.  265.00      HBA              340.00
C.E.A.    2040.00             B.Fund           10.00

Total    8632.00            Total           1989.85


 Net Payable Rs. 6642.00 (Rupees six thousand six hundred forty two only).
This salary certificate is for Accident compensation Court Case."
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4. It is urged that the Insurance Company could not have filed an appeal on any ground other than that available under Section 149 of the Motor Vehicles Act. It was submitted that a joint appeal was not maintainable. In support of this submission reliance was placed upon the case of National Insurance Co. Ltd, Chandigarh v. Nicolletta Rohtaqi and Ors., reported in wherein in para 21 it is stated as follows:-

"21. In Chinnama Goerge v. N.K. Raju it was held that if none of the conditions as contained in Sub-section (2) of the 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 Chinnama George's case, an earlier judgment in the case of Narendra Kumar v. Yarenissa, reported in (1997-2)116 P.L.R. 417 (S.C.) was cited wherein it had been held that if an award had been made against the tort easer as well as the insurer the appeal could not be dismissed but the tort easer could proceed with the appeal after deleting the name of the insurer, In spite of this judgment having been shown to the Court it was observed in Para 10, as follows:-

"10. There is no dispute with 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 a joint appeal will be incompetent. It is not enough if the insurer is struck out from the array of 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."

5. With this conflict of decisions reference may have had to be made to a large Bench. However, in the case of H.S. Ahammed Hussain and Anr. v. Irfan Ahammed and Anr. all these judgments have been considered. The case of Chinnama George has been distinguished and it has been finally held that a joint appeal was maintainable by deleting the name of the Insurance Company. We are | in agreement with this view.

6. Further the question whether the appeal was maintainable, without deleting the name of the Insurance Company, was one which should have been agitated before the High Court. This question was not agitated before the High Court at all. It is an admitted position that the award was against both the owners and the Insurance Company. To that extent the owners were also aggrieved. They definitely had a right to maintain an appeal. So long as the owner was a party to the appeal the mere fact that the name of the Insurance Company was not deleted (as no such objection was taken before the High Court) is no ground for setting aside the impugned order.

7. It was next urged that the award was against the owners of both the vehicles and against the two Insurance Companies. It was pointed out that the other owner and the other Insurance Company had not filed any appeal. It was submitted that the High Court should not have interfered on the appeal of only one party. We see no substance in this submission. Merely because the other owner does not file an appeal does not mean, that a party aggrieved cannot maintain his own appeal.

8. Lastly it was submitted that the salary certificate shows that the salary of the deceased was Rs.8,632/-. It was submitted that the High Court was wrong in taking the salary to be Rs.6,642/-. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards LIC, Society charges and HBA etc. We are unable to accept this submission also. The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents would only be receiving the net amount less l/3rd for his personal expenses. The High Court was therefore right in so holding.

9. In this view of the matter, we see no reason to interfere. Accordingly, the appeal stands dismissed with no order as to costs.

10. It is, however, clarified that what will be payable by respondent would be 50% of the amount awarded by the High Court with interest thereon.