

Uttaranchal High Court

United India Insurance Co. Ltd. vs Gurjeet Kaur And Ors. on 23 September, 2003

Equivalent citations: 2005 ACJ 288

Author: S Kapadia

Bench: S Kapadia, R Tandon

JUDGMENT S.H. Kapadia, C.J.

1. This appeal came for admission on 23.9.2003 when the following order was passed:

"For the reasons to be subsequently recorded, appeal is dismissed as not maintainable."

Accordingly, we now propose to give the reasons.

2. United India Insurance Co. Ltd. has come by way of appeal under Section 173 of Motor Vehicles Act, 1988, against judgment and order passed by Motor Accidents Claims Tribunal on 3.8.2002 in M.A.C.T. Case No. 43 of 1999.

3. Deceased Inder Pal Singh came from California, USA to India on 25.10.1998 to meet his daughter studying in India. On 29.10.1998, Inder Pal Singh along with his younger brother was proceeding by Tata Siera No. UP 7395 to Chandigarh for Dehradun when his vehicle collided with bus No. UP 3055 driven by Narain Singh, original respondent No. 1. The accident took place near village Rampur. Inder Pal Singh was 38 years old. He received fatal injuries. He died on the spot. He was sitting next to the driver of Tata Siera. Inder Pal Singh was an NRI. He came from California. He was an Electronic Engineer. At the time of his death, he was working as a Director in an American company drawing a salary of US \$ 1,80,000 per annum. The deceased left behind him his wife Gurjeet Kaur, his minor daughter Raman Kaur, his minor son Jasraj Singh and his mother (all claimants).

4. After the pleadings were duly completed, issues were framed by the Tribunal. We are concerned with issue No. 1, which reads as follows:

"Whether the accident occurred due to rash and negligent driving of bus No. 3055 by Narain Singh, original respondent No. 1, as a result of which, Inder Pal Singh died?"

5. After considering the evidence on record, the Tribunal awarded compensation of Rs. 5,10,09,000 (rupees five crore ten lakh nine thousand only) to the claimants with simple interest at the rate of 9 per cent from 16.3.1999. This huge compensation was granted because the deceased was an NRI and he was earning income in terms of American dollars.

6. Being aggrieved by the judgment and order passed by the Tribunal, United India Insurance Co. Ltd. has come before us by way of appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Mr. L.P. Naithani, the learned senior counsel appearing on behalf of the claimants raised a preliminary objection to the maintainability of this appeal. He submitted that in view of the judgment of the Supreme Court in the case of National Insurance Co. Ltd. v. Nicolledda Rohtagi,

2002 ACJ 1950 (SC), the appeal was not maintainable because it is confined only to the quantum of compensation awarded by M.A.C.T. It was argued on behalf of the claimants that the only ground on which the insurance company can defend the claim would be breach of conditions of policy or that the policy is void as provided by Section 149(2) of the Motor Vehicles Act, 1988. He, further, argued that even conditions of Section 170 of the Motor Vehicles Act, 1988 are not satisfied and, therefore, the appeal was not maintainable.

8. Mr. U.K. Uniyal, learned advocate appearing on behalf of the appellant, however, contended that M.A.C.T. has passed an arbitrary order. He contended that the Claims Tribunal has given compensation amounting to Rs. 5,10,09,000 (rupees five crore ten lakh nine thousand only) which constitutes over-compensation. He contended that the object of the 1988 Act was to compensate the injured and not to overcompensate. He relied on several rulings of the Apex Court in that regard.

9. The only issue is whether appeal under Section 173 of the Motor Vehicles Act, 1988 filed by insurance company is non-maintainable. We find merit in the preliminary objection raised on behalf of the claimants. In the above judgment of the Supreme Court, it has been held that the insurance company can defend the claim petition only on the ground of breach of conditions of policy or on the ground that the policy is void for reasons given in Section 149(2) of the Act. That the insurance company cannot avoid its liability on any ground except those mentioned in Section 149(2) of the Act. That the insurer has no right to file an appeal to challenge the quantum of compensation or the finding of the Tribunal as regards negligence or contributory negligence of the offending vehicle except in cases where Section 170 is applicable. That, in cases where in the course of inquiry, the Tribunal is satisfied that there is collusion between the claimant and the person against whom the claim has been made or if the Tribunal is satisfied in course of inquiry that 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 on the grounds which are available to the insured. Therefore, where the conditions precedent to Section 170 are satisfied and the award is adverse to the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence on the part of the offending vehicle.

10. The above judgment of the Supreme Court applies to the facts of this case. We have gone through the memo of appeal. United India Insurance Co. Ltd. has filed this appeal only against the quantum of compensation awarded by M.A.C.T. Further, the conditions precedent to Section 170 are not satisfied. Therefore, the appeal is not maintainable.

11. Before concluding, we may point out that by an interim order passed by the earlier Bench on 12.11.2002, the appellant was directed to deposit Rs. 1,50,00,000. The amount was deposited. The claimant was permitted to withdraw Rs. 50,00,000 by order dated 12.5.2003 passed by earlier Bench. Consequently, Rs. 1,00,00,000 is lying with the Registry as of today. Since, we are dismissing the appeal as not maintainable, we are directing the Registrar to return Rs. 1,00,00,000 to United India Insurance Co. Ltd. (appellant).

12. The appeal is accordingly dismissed as not maintainable.