Supreme Court of India
Narendra Kumar And Anr. vs Yarenissa And Ors. on 12 January, 1996
Equivalent citations: I (1997) ACC 341, 1998 ACJ 244, JT 1998 (7) SC 445, (1997) 116 PLR 417, RLW 1999 (2) SC 246, (1998) 9 SCC 202
Bench: A Ahmadi, S V Manohar
ORDER

1. Special leave granted.

2. The cleavage of authority -- some High Courts taking the view that a joint appeal by the Insurance Company and the owner or driver of the offending vehicle is not competent in its entirety and others taking the view that the appeal of the owner or driver of the vehicle would be competent though not a joint appeal i.e. Insurance Company's appeal alone may be incompetent -- has given rise to this group of appeals.

3. The abridged version of facts necessary to be noticed for the disposal of these appeals are that all these appeals arise out of a single accident which took place on 10-6-1987 wherein two vehicles, namely, a taxi-car bearing Registration No. RST 1018 and a motor truck bearing Registration No. DEL 3065 were involved in a head-on collision. All the six persons occupying the taxi-car died in the accident, five on the spot and one a little later. Their legal representatives filed claim applications in the Motor Accident Claims Tribunal, Jaipur. The Claims Tribunal made an award in favour of the legal representatives of all the victims holding the owner as well as the driver of the truck liable in damages along with the Insurance Company for varying amounts. Certain other directions were given which need not be noticed. Against the said award, the owner of the truck and the Insurance Company filed joint appeals in the High Court of Rajasthan (Jaipur Bench), Jaipur. The claimants had also filed appeals for enhancement of the compensation amount which were allowed by the High Court. We need not refer to the details thereof because in the present case we are not dealing with the question of quantum of compensation. So far as the joint appeals of the owner and Insurance Company are concerned, a learned Single Judge of the High Court, Bhargava, J., held that the joint appeals are not maintainable and directed their dismissal. Against the said order of the learned Single Judge, the owner and the Insurance Company preferred a joint appeal to a Division Bench of the High Court which came to be disposed of by the impugned judgment dated 12-4-1993. The Division Bench also affirmed the view of the learned Single Judge. Hence these appeals by special leave.

4. At the outset a few provisions of the Motor Vehicles Act, 1939 by which the appeals were governed may be noticed. Section 95 indicates the requirement of a policy of insurance and Section 96(1) provides that if, after a certificate of insurance has been issued under Sub-section (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95 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, object to the provisions of this section, pay to the person entitled to the benefit of the decree such sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the

liability, together with interest and cost that may have been awarded. Sub-section (2) next provides that no sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the grounds given in the various clauses. Sub-section (6) next provides that no insurer to whom the notice referred to in Sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in Sub-section (1) otherwise than in the manner provided for in Sub-section (2). The scheme of Section 96 to the extent relevant, therefore, is that before an insurer can be saddled with the liability to pay the sum awarded to the claimants as if he were a judgment-debtor, it is necessary that he must have prior notice of the institution of the proceedings before judgment is given, so that, if he has the defences set out in Clauses (a) to (c) available to him he may seek to be joined as a party to the proceedings and raise all or any of those defences. It is, therefore, obvious on a plain reading of the aforesaid three sub-sections of Section 96 that before any insurer can be saddled with the liability to answer judgment he must have notice of the proceedings and an opportunity to defend on all or any of the grounds enumerated in Clauses (a) to (c) of Sub-section (2) of Section 96, if the same, in the facts and circumstances of the case, is or are available to the insurer. Once that opportunity is made available, Sub-section (6) of Section 96 says that the insurer shall not be entitled to avoid his liability to any person entitled to the benefit of any such judgment otherwise than in the manner provided by Sub-section (2). We may next notice Section 110-C(2-A) which outlines the procedure and powers of the Claims Tribunal constituted under the Act. Sub-section (2-A) provides that where in the course of any inquiry, the Claims Tribunal is satisfied that there is collusion between the person making the claim and the person against whom it is made, or the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer, who may be liable in respect of such claim, be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds available to the person against whom the claim was made. This sub-section shows that the initial requirement is merely to issue a notice to the insurer to inform him of the filing of the claim application and it is then left to the insurer whether or not it would seek impleadment to defend action on any of the grounds available under Sub-section (2) of Section 96 of the Act. In the situation envisaged by Sub-section (2-A) of Section 110-C, the Claims Tribunal, if it finds that the claimants and the person against whom the claim is made have colluded or the person against whom the claim is made has failed to contest the claim, it may direct impleadment of the insurer and permit him to contest the claim on all or any of the grounds that would have been available to the person against whom the claim was made. In the present case, such a situation has not arisen but it is essential to take notice of the said sub-section for the purpose of understanding the scheme of the Act. Section 110-D provides for appeals. It says that subject to Sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within the prescribed period, prefer an appeal to the High Court. Sub-section (2) provides that no appeal shall He if the amount in dispute in the appeal is less than two thousand rupees. On a plain reading of the aforesaid provisions, it seems clear to us that the claim must be preferred against the tortfeasors and notice thereof must go to the Insurance Company and if all or any of the defences set out in Sub-section (2) of Section 96 are

available to the Insurance Company and it seeks to be impleaded as a party, it may be so impleaded and allowed to raise all or any of those contentions. The other situation in which the Insurance Company can be impleaded as a party is the one set out in Sub-section (2-A) of Section 110-C of the Act. Essentially, therefore, the claim would be against the tortfeasors, in the instant case, the owner and driver of the offending vehicle.

5. It is a different matter that claimants normally make the insurance company a party to the claim application. That by itself cannot confer a right of appeal on the insurer. The grounds on which the insurer can defend the action commenced against the tortfeasors are limited and unless one or more 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. If then the insurer and the owner of the offending vehicle file a joint appeal and if the Court comes to the conclusion that the insurer had no right to prefer an appeal under Section 110-D of the Act because none of the defences mentioned in Sub-section (2) of Section 96 were available to him nor had a situation of the type envisaged by subsection (2-A) of Section 110-C arisen, it cannot be permitted to file an appeal whether on its own or in association with one or more of the tortfeasors against whom the award is made which the insurer is liable to answer as if a judgment-debtor.

6. The question, however, is if such a joint appeal is preferred must it be dismissed in toto or can the tortfeasor, the owner of the offending vehicle, be permitted to pursue the appeal while rejecting or dismissing the appeal of the insurer. If the award has gone against the tortfeasors it is difficult to accept the contention that the tortfeasor is not "an aggrieved person" as has been held by some of the High Courts vide Kantilal & Bros. v. Ramarani Debi, 1980 ACJ 501 (Cal), New India Assurance Co. Ltd. v. Shakuntla Bai, 1987 ACJ 224 (MP), Nahar Singh v. Manohar Kumar, (1993) 1 ACJ 269 (J&K), Radha Kishan Sachdeva v. Fit, Lt. L.D. Sharma, (1993) 27 DRJ 18 (Del) merely because under the scheme of Section 96 if a decree or award has been made against the tortfeasors the insurer is liable to answer judgment "as if a judgment-debtor". That does not snatch away the right of the tortfeasors who are jointly and severally liable to answer judgment from preferring an appeal under Section 110-D of the Act. If for some reason or the other the claimants desire to execute the award against the tortfeasors because they are not in a position to recover the money from the insurer the law does not preclude them from doing so and, therefore, so long as the award or decree makes them liable to pay the amount of compensation they are aggrieved persons within the meaning of Section 110-D and would be entitled to prefer an appeal. But merely because a joint appeal is preferred and it is found that one of the appellants, namely, the insurer was not competent to prefer an appeal, we fail to see why the appeal by the tortfeasor, the owner of the vehicle, cannot be proceeded with after dismissing or rejecting the appeal of the insurer. To take a view that the owner is not an aggrieved party because the Insurance Company is liable in law to answer judgment would lead to an anomalous situation in that no appeal would lie by the tortfeasors against any award because the same logic applies in the case of a driver of the vehicle. The question can be decided a little differently. Can a claim application be filed against the Insurance Company alone if the tortfeasors are not the aggrieved parties under Section 110-D of the Act? The answer would

obviously be in the negative. If that is so, they are persons against whom the claim application must be preferred and an award sought for otherwise the insurer would not be put to notice and would not be liable to answer judgment as if a judgment-debtor. Therefore, on first principle it would appear that the contention that the owner of a vehicle is not an aggrieved party is unsustainable. That is the view taken by the High Court of Allahabad in United India Fire & General Insurance Co. Ltd. v. Gulab Chandra Gupta, and Oriental Fire & General Insurance Co. Ltd. v. Rajendra Kaur, 1989 ACJ 961 (All) as well as the High Court of Kerala in K.R. Visalakshi v. Pookodan Hamza, 1989 ACJ 600 (Ker) commends us.

7. 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.

8. On the merits of the matter, we find that the appeals do not call for interference. On the quantum of compensation, we see no reason to interfere with the impugned award. Even the learned counsel for the appellants are unable to point out any serious flaw in the reasoning recorded by the learned Single Judge of the High Court. The appeals will, therefore, stand disposed of accordingly with no order as to costs.