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Court : Guwahati

Decided On : Aug-19-1983

Judge : B.L. Hansaria and T.N. Singh, JJ.

Appellant : Hemchandra Choudhury and ors.

Respondent : Dr. Harmohan Pathak

Advocate for Pet/Ap. : Sri. Bhuyan

Judgement :

B.L Hansaria, J.

1. An award was passed in a motor accident claims case in favour of the claimant who was injured in an accident which had taken place on 14-11-1968 at about 2.15 p.m. in the city of Gauhati itself. The claimant is a medical practitioner and his case is that he had sustained head injury with fractures on different parts of the body and had undergone pain and suffering. On being satisfied that the accident was due to negligence on the part of the driver, a sum of Rs. 20,000/- has been awarded in favour of the claimant which, as per the award, 'will be realised from the Insurer the opposite party No. 3 M/s. Phoenix Assurance Company Limited, Gauhati or other authority which has taken the responsibility of the business of the said company.' This appeal has been preferred jointly by the owner of the vehicle, the driver of the same and the Insurance Company.

2. Sri Das for the respondent has raised preliminary objection regarding the maintainability of the appeal inasmuch as the owner and the driver could not have come up to this Court. Under Section 110-D of the Motor Vehicles Act, 1939 (the Act, for short) an appeal can be preferred by 'any person aggrieved by an award of a Claims Tribunal.' We have therefore to decide whether the owner and the driver can be regarded as persons aggrieved. This aspect is important not only for deciding the question of maintainability, but also to see if the insurer (in case it alone could file the appeal) could agitate before us the question of negligence or quantum of compensation.

3. So far as the second aspect is concerned, Sri Bhuyan the learned Counsel for the appellants, has fairly admitted that an insurer cannot travel in his defence beyond what has been prescribed in Section 96(2) of the Act. This view was first expressed by the Apex Court in *British India General Insurance Company v. Itbar Singh* : [1960]1SCR168 . There is no dispute before us that what is stated in Section 96(2) would apply in an appeal also. Shri Bhuyan however submits that as the owner and the driver, more particularly the owner, has joined hands in preferring the appeal we can examine the question of negligence and quantum also.

4. It has therefore to be seen whether the owner could have preferred the present appeal. As alluded, Section 110-D has conferred the right of appeal on a 'person aggrieved' by the award. The appeal being a creature of a statute, this right can flow only from what has been laid down in the afore said Section. Though no compensation has been made payable by the owner, Sri Bhuyan contends that the owner could nonetheless prefer the appeal because it is the negligence of his driver which has led to the award of compensation and which has been made payable by the insurer because of the provisions in Sections 95 and 96 of the Act.

5. We have therefore to see as to what reasonable meaning can be ascribed to the expressions 'person aggrieved' and 'award.' As to the second expression we may refer to Section 110-B which deals with an award of the claims tribunal and states that the tribunal may make award determining the amount of compensation which appears to be just and specify the person or persons to whom

compensation shall be made and who shall pay the same. It is apparent that the word 'award' will include final decisions of claims ' tribunal on the above matters. We do not think that a finding on an issue necessary to arrive at the final decision as aforesaid could be regarded as an award.

6. As to the expression 'person aggrieved,' Sri Das for the respondent, has referred to Kantilal and Brothers v. Ramarani : AIR1979 Cal152 . In finding out the meaning of this phrase, the Bench referred to Adi Pherozshah v H M' Seervai : [1971]1SCR863 and Bar Council of Maharashtra v. M.V. Dabolker : [1976]1SCR306 , wherein the Supreme Court had examined the width and purport of this expression; and has held that the grievance for which a person may appeal must be genuine and real grievance affecting prejudicially his interest. In the Calcutta case as well the owner was a co-appellant though no liability for paying the compensation had been placed upon him, as in the present case. On these facts it was observed by the Division Bench that there was no 'denial or deprivation of legal right or financial interests nor any order affecting prejudicially to the interests of the owner' of tree vehicle. So it was held there was no legal or practical injury to the owner, and as such the appeal was found incompetent. With respect, we agree with this view which is founded on the pronouncements of the highest Court of the land which do not propose to recapitulate as this has been admirably done in Kantilal. We may add that any other view even frustrate some provisions of the Act, as by bringing an owner as co-appellant, the insurer, the real aggrieved person, could even get the award challenged on grounds not otherwise available to it. It is a settled law that while interpreting or giving meaning to a particular expression in a section, provisions of other sections have also to be kept in mind as all the parts of a statute must be construed harmoniously.

7. Shri Bhuyan however contending that under the terms of the policy, an insured owes a duty to the insurer to help the latter in such cases, and it is this duty which has led the owner to give company to the insurer. We do not think if such a term in the policy, even if true, on which we do not express any opinion as policy is not before us, can scuttle the provision of law enshrined in Section 96(2) of the Act. In this connection it would be apposite to refer to the provisions of the 110-C(2-A) as inserted in the Act in 1969 by which a right has been conferred on the insurer to

contest the claim on all or any of the ground available to the person against whom the claim has been made, in case the tribunal is satisfied that there is a collusion between the person making the claim and the person against whom the claim is made, or the person against whom the claim is made has failed to contest a claim. The present is definitely not a case of this nature inasmuch as the owner had duly contested the claim, and far from there being any collusion of the above type, he has Joined hands with the insurer even in this appeal.

8. In the aforesaid view of the matter, we are of the view that the owner and of the driver could not have preferred this appeal, and the approach to this Court should be confined to the insurer. In such a situation, we cannot examine the issues relating to negligence and quantum, on which alone Shri Bhuyan want us to address, as these aspects are not covered by Section 96(2) of the Act.

9. The result is that the appeal is dismissed the insurer could pay the remaining amount of Rs. 10,000.00 (out of Rs. 20,000.00 a sum of Rs. 10,000.00 is said to have been paid) along with the interest and cost is awarded within the period of 2 months from today, failing which the interest would run at the rate of 12% per annum after two months.