

Narendra Kumar and anr. Vs. Vares Hassan Farooqui and ors.

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Court : Rajasthan

Decided On : Apr-12-1993

Reported in : II(1993)ACC100; 1994ACJ205; 1994(3)WLC575

Judge : Inder Sen Israni and; V.K. Singhal, JJ.

Appeal No. : D.B. Special Appeal Nos. 3, 4, 5, 6, 33 and 34 of 1993

Appellant : Narendra Kumar and anr.

Respondent : Vares Hassan Farooqui and ors.

Advocate for Def. : K.N. Tiwari and; N.N. Tiwari, Advs.

Advocate for Pet/Ap. : B.P. Agrawal and; S.C. Srivastava, Advs.

Disposition : Appeal dismissed

Judgement :

Inder Sen Israni, J.

1. Since common question of law is involved in all these special appeals and the appeals filed against the award of Motor Accidents Claims Tribunal were disposed of by common judgment, they are also disposed of by a common judgment.

2. These special appeals have been filed against the judgment dated 5.11.1992, passed by the learned single Judge, whereby all the appeals filed by the

appellants were dismissed.

3. Briefly stated, on 9.6.1987, Faizan Varis Farooqui, Asir Ali Sajid, Nausad Ali, Vishnu Sharma and Natwar Lal were travelling in a taxi car No. RST 1018, from Ajmer to Jaipur. The taxi met with an accident at about 1 a.m. on June 10, 1987, near Dudu on Jaipur-Ajmer Road, when truck No. DEL 3065, coming from opposite direction, hit the aforesaid taxi. It was held by the learned Tribunal that the truck was driven rashly and negligently, while the car was going on its correct side and was not at fault. On account of accident, all the six persons named above as also the driver of the car died. The claim petitions filed by the legal representatives of the deceased persons were contested. The truck was insured with Oriental Insurance Co. Ltd. The learned Tribunal awarded damages in all the claim petitions. The dependants of the deceased persons filed six separate appeals for enhancement of the compensation awarded by the Tribunal, which were allowed by the learned single Judge, whereas six appeals filed by Oriental Insurance Co. Ltd. along with the owner of the truck were dismissed. These special appeals have been filed by the owner and the insurance company against the dismissal of their appeals by the impugned judgment.

4. The main ground urged by Mr. B.P. Agrawal, learned counsel, is that the learned single Judge has erred in holding that the appellants were not 'aggrieved persons', hence the joint appeals were not maintainable. It is submitted that this preliminary objection raised on behalf of the respondents has no force and was erroneously upheld by the learned single Judge. It is further submitted that Sub-section (2) of Section 96 of the Motor Vehicles Act, 1939 (for brevity, 'the Act of 1939') has not been properly interpreted. It is also submitted that since the award was passed against the insured, which is payable by the insurer and, in case the insured is aggrieved, the appeal could be maintained jointly by the insurer and the insured. It is pointed out that the insured person is also an 'aggrieved person', if he feels that the amount awarded against him is excessive. It is further pointed out that the learned single Judge did not consider carefully the order passed by the Division Bench of Madhya Pradesh High Court in *Parmanand v. Manohardas* 1990 ACJ 888 (MP), in which a view has been taken that such an appeal is maintainable. It is also pointed out that Madras High Court in *United India Fire &*

Genl. Ins. Co. Ltd. v. Ayisa 1979 ACJ 526 (Madras), has also taken the same view. It is, therefore, submitted that the appeals be admitted and decided on merits.

5. We have heard both the parties at length and gone through all the judgments cited at the Bar. A Division Bench of this court has held in the case of New India Assurance Co. Ltd. v. Lad Kanwar 1994 ACJ 105 (Rajasthan), that special appeal is not maintainable in view of the provisions of the Motor Vehicles Act and this appeal is, therefore, liable to be dismissed on this ground alone. However, we have examined the matter on merit also and find that this court has taken a consistent view that a joint appeal is not maintainable. Even if two constructions are possible, the view which has prevailed in State should not be disturbed and on this ground also the appeal has no substance. It may be pointed out that under the provisions of Section 110-D (1) of the Act of 1939, the right of appeal is given to such a person, who is aggrieved by an award of Claims Tribunal. Thus, it is only 'person aggrieved' by the award who can file an appeal against the award given by the Tribunal. Under the provisions of Sub-section (2) of Section 96 of the Act of 1939, insurance company can raise only such defences against the claim as are available to it under the said provision. Thus, the insurance company cannot raise any objection as to the quantum of compensation awarded. It may be mentioned that phraseology of Sub-section (2) of Section 96 makes it abundantly clear that the insurance company has only limited scope for raising defences in accordance with the provisions of Sub-section (2). It can raise no other defences. We are fortified in our view by a decision of the Apex Court in British India General Insurance Co. Ltd. v. Captain Itbar Singh 1958-65 ACJ 1 (SC), wherein it was held by the Apex Court that:

Sub-section (2) seems to us to be perfectly plain and to admit of no doubt or confusion. It is that an insurer to whom the requisite notice of the action has been given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely, after which comes an enumeration of the grounds. It would follow that an insurer is entitled to defend on any of the grounds enumerated and no others. If it were not so, then, of course, no grounds need have been enumerated. When the grounds of defence have been specified, they

cannot be added to. To do that would be adding words to the statute.

It is, therefore, clear that the insurance company cannot raise any defence or file appeal against the quantum awarded to the claimants.

6. The contention of the learned counsel that joint appeal can be filed by the owner and the insurance company, since owner is a 'person aggrieved' by the excess amount awarded to the claimants. It may be pointed that 'aggrieved party' has been defined in Black's Law Dictionary, 6th Edition, 1990, at p. 65 as under:

One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. The word 'aggrieved' refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation.

Admittedly, the amount of compensation awarded by the Tribunal, or increased by the learned single Judge in appeal, is to be paid fully by the insurance company and the owner or the driver is not burdened at all. Thus, no pecuniary interest of the owner is directly or adversely affected either by the award or by the judgment given by the learned single Judge. No burden or obligation has been imposed on the owner-appellant by the abovementioned judgment of the learned single Judge. Thus, by no stretch of imagination it can be said that the owner is a person aggrieved by the award or the impugned judgment of the learned single Judge, since no part of compensation is to be paid by him. However, the position becomes different when the owner becomes liable to make part payment of the compensation. Apart from this, it may be pointed out that the grounds on which owner and insurance company can file appeal against the award are different as provided in the Act of 1939. The insurance company can raise only such objections as laid down under the provisions of Sub-section (2) of Section 96. Therefore, when the owner and insurance company file appeal on different grounds, no joint appeal can be maintained by both of them, because scope and grounds of each of the appellants are different as per provisions of the Act of 1939. We have carefully gone through the judgment given in *Parmanand v. Manohardas*, 1990 ACJ 888 (MP). However, we respectfully disagree with the view taken therein. In the above judgment, it has been held that the driver or the

owner has every reason to feel aggrieved against the finding of negligence, if it is not accepted as correct by either of them and they are persons aggrieved so as to come in appeal for challenging the adverse finding against them. It may be pointed out that relevant provisions of the Motor Vehicles Act are beneficial legislation and have been enacted with the purpose of sympathetically and expeditiously considering the claims filed by the legal representatives of such persons, who lost their lives in the accident or by persons, who are injured in the accident. If the interpretation given in the case of *Parmanand v. Manohardas* 1990 ACJ 888 (MP), is accepted, it will drag poor claimants, who have already lost their near and dear one who was the sole bread-earner for the family, to continue to fight the litigation endlessly and go on contesting the costly litigation to get the compensation awarded to them. It may also be pointed out that the Division Bench of the Madhya Pradesh High Court, while deciding the matter of *Parmanand v. Manohardas* 1990 ACJ 888 (MP), overruled the earlier decision of the same High Court in *Mansukh Lal v. Bhagwanti Bai*, M.A. No. 18 of 1981; decided on 31.10.1988, of Indore Bench, in which a view was taken that owner or driver of the vehicle cannot be treated as the 'person aggrieved' in terms of Section 110-D of the Act, merely because of finding that the vehicle was driven rashly and negligently, if no amount specified is due and payable by him in the award. It may be pointed out that another Division Bench of the same Madhya Pradesh High Court in *Ashok Kumar v. Dhulia* 1992 ACJ 519 (MP), has held that when none of the grounds enumerated in Sub-section (2) of Section 96 of the Act of 1939, in the memo of joint appeal, is available to the insurance company as ground of attack, it does not behove a nationalised institution like insurance company to depend on the insured for support and survival of its appeal against a poor tribal, putting him to further expenses in contesting such appeal. Thus, it can be said that when insurance company manages to file joint appeal along with owner, which it could not have filed on its own, it shows that such an appeal will only result in harassment of the claimants to deny the benefit of compensation awarded to them in the award. So far as the judgment of *United India Fire & Genl. Ins. Co. Ltd. v. Ayisa* 1979 ACJ 526 (Madras), is concerned it may be pointed out that no reasons have been given for the view that the insurance company can file appeal along with owner against the quantum of compensation awarded to the claimants. It was held that the

insurance company alone cannot file appeal against the quantum without bringing in the insured as co-appellant. Apart from the reasons given above by us, it may further be pointed out that it will be always easy for the insurance company to rope in the owner of the vehicle to join as co-appellant in filing appeal against the quantum of compensation awarded to the claimants, as the whole expenses will be borne by the insurance company and the owner will have to bear no burden whatsoever in filing the appeal. It may be pointed out that a Division Bench of this court in *Roop Narain v. Avtar Singh* 1987 ACJ 336 (Rajasthan), has already taken a view that the insurance company can raise only such defences which are available to it under the provisions of Sub-section (2) of Section 96 of the Act of 1939 and it cannot raise any objection regarding quantum of compensation awarded to the claimants. In *Sushila v. Succha Singh* 1989 ACJ 226 (Rajasthan), Justice N.M. Kasliwal, as he then was, while agreeing with the view of the Karnataka High Court in *Vellayya Gounder's case* 1982 ACJ 251 (Karnataka) and defining the words 'person aggrieved', held that the driver and owner are not aggrieved persons inasmuch as the liability to pay the compensation has been fixed on the insurance company and the insurance company can challenge the award only on the grounds available under Sub-section (2) of Section 96 of the Act. It may also be pointed out that a Division Bench of the Calcutta High Court in *Kantilal and Bros. v. Ramarani Debi* 1980 ACJ 501 (Calcutta), held that when Claims Tribunal imposed no legal burden on the insured and the payment was to be made by the insurance company, the owner of the offending car cannot be held to be 'person aggrieved' under Section 110-D of the Act of 1939. His appeal against the quantum of compensation awarded was held to be not maintainable, as there had been no legal or practical injury to the owner. In the matter under consideration also, no burden whatsoever has been imposed on the owner. Thus, no legal or practical injury has been caused to him. A Full Bench of the High Court of Jammu and Kashmir in *United India Fire & Genl. Ins. Co. Ltd. v. Lakshmi Shori Ganjoo* 1982 ACJ 470 (J&K;), held that the insurer is not entitled to resist the award, where the insured has been found liable, on the ground not enumerated under Sub-section (2) of Section 96 of the Act, except in cases where the terms of the policy of insurance provide that the insurer has the right to defend the action in the name of the insured and if it appears that the claimant and the insured have

colluded, then after receiving permission of the Tribunal under Section 110-C (2A), the insurer can defend the claim as well as the award on all grounds which are available to the insured. It may also be pointed out that a Division Bench of the High Court of Judicature at Allahabad in *United India Fire & Genl. Ins. Co. Ltd. v. Gulab Chandra Gupta* 1985 ACJ 245 (Allahabad), held that joint appeal by insurer and owner of the vehicle against the award passed by the Tribunal was not maintainable as the owner and insurer cannot have a common ground to challenge the award as the defences available to insurer are confined to those enumerated under Sub-section (2) of Section 96 of the Act of 1939. The insurer raised ground that there was no rashness and negligence on the part of the driver as there would be no liability either of the driver or owner, consequently no amount would be payable by the insurer. It was held that it is not open to insurer to challenge the rash and negligent finding or quantum of compensation or any finding not covered within the parameter of Sub-section (2) of Section 96 of the Act of 1939. The view taken by the Calcutta High Court, Allahabad High Court and Jammu & Kashmir High Court is same as taken by us in the matter under consideration.

7. We are, therefore, of considered opinion that since the grounds to challenge the award by the owner and the insurer are different, as provided under the relevant provisions of the Act of 1939, a joint appeal by them is not maintainable. Apart from this, since no burden of payment of the compensation is imposed on the owner and no legal or practical injury has been caused to him, he cannot be termed to be 'person aggrieved', as per Section 110-D of the Act of 1939.

8. In the result, the special appeals are not maintainable on both counts and are, therefore, dismissed. The appellants shall pay Rs. 2,000/- in each appeal as costs to the respondents.