

# LEGAL NOTES

## Supreme Court of India

National Insurance Co. Ltd. .... *Appellant*

v.

Nicoletta Rohtagi and others .... *Respondents*

### THE FACTS

# A

A group of appeals was considered together by the Court and a common Judgement was delivered.

In Civil Appeal No. 5911 of 2002 arising out of S.L.P. (Civil) No. 9238 of 2000, the appellant was grievously injured in a motor vehicle accident on 29.5.1993. He preferred a claim petition before the Tribunal and the learned Tribunal granted a compensation to the tune of Rs. 1,50,415 against the insurer and the insured jointly. The insurer was directed to deposit the decretal amount. The insured did not file any appeal. On appeal being filed by the insurer, the High Court reduced the compensation to Rs. 84,375. In this appeal, the appellant questioned the maintainability of the appeal preferred by the insurer.

In Civil Appeal No. 4292 of 2002, an accident took place on 8.8.1995 in which one Anil Kishore Rohtagi died. The dependants of the deceased filed a claim petition before the Tribunal and the Tribunal awarded compensation to the tune of Rs. 13,13,150 with interest at the rate of 20 per cent per annum. The appeal preferred against the said award before the High Court by the insurer was dismissed on the ground that no appeal at the instance of the insurer is maintainable as regards quantum of compensation. It is against the said judgement of the High Court, the insurer has preferred this appeal.

When this matter came up for hearing before a Bench of this court, learned Judges were of the view that since two Benches of this court comprising two learned Judges in *Rita Devi v. New India Assurance Co. Ltd.*, 2000 ACJ 801 (SC) and *United India Insurance Co. Ltd. v. Bhushan Sachdeva*, 2000 ACJ 333 (SC), have taken a contrary view, the matter is required to be decided by a Bench of three learned Judges.

In Civil Appeal No. 5913 of 2002 arising out of S.L.P. (Civil) No. 10616 of 2001, identical question of law is involved and the same has been referred to a Bench of three learned Judges.

In Civil Appeal No. 5914 of 2002 arising out of S.L.P. (Civil) No. 17076 of 2001, one Rabinder Singh Lehal died in a motor accident. The dependants of the deceased preferred a claim petition before the Tribunal. The Tribunal awarded a compensation to the tune of Rs. 2,70,000 in favour of the claimants. In an appeal preferred by the insurer, the High Court held that the insurer cannot challenge the quantum of compensation granted by the Tribunal and in that view of the matter the appeal was dismissed. It is against the said decision, the appeal has been preferred by the insurer and a Bench of this court has also

referred this appeal to be decided by a Bench of three learned Judges.

### JUDGEMENT

The short question that arises for our consideration in this group of appeals is: "where an insured has not preferred an appeal under section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as '1998 Act') against an award given by the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal"), is it open to the insurer to prefer an appeal against the award by the Tribunal questioning the quantum of compensation, as well as the finding as regards the negligence of the offending vehicle".

For deciding the controversy at hand, it is necessary to set out the relevant provisions of the Act.

*"147. Requirements of policies and limits of liability. — (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which —*

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) —
  - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised

representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

- (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

- (i) to cover liability in respect of the death, arising out of and in the course of employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the *Workmen's Compensation Act, 1923* (8 of 1923) in respect of the death of, or bodily injury to, any such employee—
- (a) engaged in driving the vehicle or
- (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

*Explanation.* — xxx xxx

- (2) Subject to the proviso to subsection (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:
- (a) save as provided in clause (b), the amount of liability incurred;
- (b) in respect of damage to any property of a third party, a limit of rupees six thousand;

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

3) A policy shall be of no effect for the purposes of this Chapter unless and until it is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicles to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

*149. Duty of insurers to satisfy judgements and awards against persons insured in respect of third party risks.* - (1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgement or award in

respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A 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, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he was the judgement debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgements.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgement or award unless, before the commencement of the proceedings in which the judgement or award is given, the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgement or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

- (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :
- (i) a condition excluding the use of the vehicle—
- (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

- (b) for organised racing and speed testing, or
- (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicles is a transport vehicle, or
  - (i) without side-car being attached where the vehicle is a motor cycle; or
  - (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
  - (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
- (d) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where any such judgement as is referred to in sub-section (1) is obtained from a court in a reciprocating country and in the case of a foreign judgement is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgement were given by a court of India :

Provided that no sum shall be payable by the insurer in respect of any such

judgement unless, before the commencement of the proceedings in which the judgement is given, the insurer had notice through the court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a part to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respect such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression 'material fact' and 'material particular' means, respectively a fact or particular of such a nature as to influence the judgement of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression 'liability covered by the terms of the policy' means a liability which is covered by the policy or which would

be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgement or award as is referred to in sub-section (1) or in such judgement as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

170. Impleading insurer in certain cases—Where in the course of any inquiry, the Claims Tribunal is satisfied that —

- (a) there is collusion between the person making the claim and the person against whom the claim is made, or
- (b) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

173. Appeals— (1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless

he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court :

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims tribunal if the amount in dispute in the appeal is less than ten thousand rupees.”

9. Since one of the appeals arises out of the Motor Vehicles Act, 1939 (hereinafter referred to as ‘the 1939 Act’), we may also briefly note the provisions of 1939 Act corresponds to section 149 (1) of 1988 Act which provides that after the issuance of the certificate of insurance, the insurance company shall satisfy the award or decree passed by the Tribunal against the insured not exceeding the sum assured as if he was the judgement debtor. Section 96 (2) of 1939 Act which corresponds to section 149 (2) of 1988 Act lays down that an insurance company can defend the action only on the policy referred to in the said section or on the ground that the policy is void for the reason referred to in the said sub-section. Section 96 (6) of the 1939 Act corresponds to section 149 (7) of the 1988 Act and the same provides that the insurance company cannot avoid the liability to any person entitled to benefit of any judgement or award referred to in sub-section (1) except in the manner provided in sub-section (2) of the Act.

Chapter VIII of 1939 Act and Chapter XI of 1988 Act have been enacted on pattern of several English statutes which is evident from the report ‘Motor Vehicles Insurance Committee, 1936-37’. In order to find out the real intention for enacting section 96 of 1939 Act which corresponds to section

149 of 1988 Act, it is relevant to trace the historical development of the law for compulsory third party insurance in England. Prior to 1930, there was no law of compulsory insurance in respect of third party rights in England. As and when an accident took place, the injured (claimant) used to bring action against the motorist for recovery of damages. But in many cases it was found that the owner of the offending vehicle had no means to pay to the injured or dependant of the deceased and in such a situation the claimants were unable to recover damages. It is under such circumstances various legislation were enacted. To meet the situation, it is for the first time the Third Parties’ Rights Against Insurance Act, 1930 was enacted in England. The provision of the said Act finds place in section 97 of 1939 Act which gave to third party a right to sue directly against the insurer. Subsequently, the Road Traffic Act, 1930 was enacted which provided for the compulsory insurance of motor vehicles. The provision of the said Act is engrafted in section 95 of 1939 Act and section 146 of 1988 Act. It is relevant to notice that under section 38 of the English Act of 1930, certain conditions of insurance policy were made ineffective so far as third parties were concerned. The object behind the said provision was that third party should not suffer on account of failure of the insured to comply with those terms of the insurance policy.

Subsequently in 1934, second Road Traffic Act was enacted. The object of the said legislation was to satisfy the liability of the insured. Under the said enactment three actions were provided. The first was to satisfy the award passed against the insured. The second was that, in case, the insurer did not discharge its liability the claimant had right to execute decree against the insurer. However, in certain events, namely, what was provided in section 96 (2) (a) which corresponds to section 149 (2) (a) of 1988 Act, the insurer could defend his liability. The

third action provided for was contained in section 10 (3) of the Road Traffic Act. Under the said provision, the insurer could defend his liability to satisfy decree on the ground that insurance policy was obtained due to misrepresentation or fraud. The said provision also finds place in section 149 (2) (b) of 1988 Act. While enacting the 1939 Act and 1988 Act, all the three actions have been engrafted in section 96 of 1939 Act and section 149 of 1988 Act. It may be remembered that neither the 1939 Act nor the 1988 Act conferred greater rights to the insurer than what had been conferred in English law.

Thus, in common law, an insurer was not permitted to contest a claim of a claimant on merits, i.e., offending vehicle was not negligent or there was contributory negligence. The insurer could contest the claim only on statutory defences specified for in the statute.

We have traced the legislative history of English law as regards liability of an insurer in the event of a motor accident in respect of third party right not for interpreting sections 149, 170 and 173 of 1988 Act, but only for showing that while enacting Chapter VIII of the 1939 Act or Chapter XI of 1988 Act, the intention of legislature was to protect third party rights and not the insurer.

To answer the question, it is necessary to find out on what grounds the insurer is entitled to defend/contest against a claim by an injured or dependants of the victims of motor vehicle accident. Under section 96 (2) of 1939 Act which corresponds to section 149 (2) of 1988 Act, an insurance company has no right to be a party to an action by the injured person or dependants of deceased against the insured. However, the said provision gives the insurer the right to be made a party to the case and to defend it. It is, therefore, obvious that the said right is a creature of the statute and its content depends on the provisions of the

statute. After the insurer has been made a party to a case or claim, the question arises what are the defences available to it under the statute. The language employed in enacting sub-section (2) of section 149 appears to be plain and simple and there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on the grounds enumerated in the sub-section, namely, sub-section (2) of section 149 of 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other conditions of the policy which do not find place in sub-section (2) of section 149 of 1988 Act. If an insurer is permitted to contest the claim on other grounds it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for.

Sub-section (7) of section 149 of 1988 Act clearly indicates in what manner sub-section (2) of section 149 has to be interpreted. Sub-section (7) of section 149 provides that no insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgement or award as is referred to in sub-section (1) or in such judgement as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. The expression 'manner' employed in sub-section (7) of section 149 is very relevant which means an insurer can avoid its liability only in accordance with what has been provided for in sub-section (2) of section 149. It, therefore, shows that the insurer can avoid its liability only on the statutory defences expressly provided in sub-section (2) of section 149 of 1988 Act. We are, therefore, of the view that an insurer

cannot avoid its liability on any other grounds except those mentioned in sub-section (2) of section 149 of 1988 Act.

It is relevant to note that Parliament, while enacting sub-section (2) of section 149 only specified some of the defences which are based on conditions of the policy and, therefore any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of section 149 cannot be taken as a defence by the insurer. If Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of section 149, it would mean we are adding more defences to insurer in the statute which is neither found in the Act nor was intended to be included.

For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of section 149 of 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds.

Before proceeding further, it may be noticed that while 'the Motor Vehicles Act, 1939' was in force, section 110-C (2-A) was inserted therein in the year 1970 which corresponds to section 170 of the 1988 Act. The said provision provides that in course of an inquiry of a claim if the Tribunal is satisfied that there is a collusion between the claimant and the insured or the insured fails to contest the claim, the Tribunal for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have,

without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

The aforesaid provisions show two aspects. Firstly, that the insurer has only statutory defences available as provided in sub-section (2) of section 149 of 1988 Act and, secondly, where the Tribunal is of the view that there is a collusion between the claimant and the insured, or the insured does not contest the claim, the insurer can be made a party and on such impleadment, the insurer shall have all defences available to it. Then comes the provisions of section 173 which provides for an appeal against the award given by the Tribunal. Under section 173, any person aggrieved by an award is entitled to prefer an appeal to the High Court. Very often the question has arisen as to whether an insurer is entitled to file an appeal on the grounds available to the insured when either there is a collusion between the claimants and the insured or when the insured has not filed an appeal before the High Court questioning the quantum of compensation. The consistent view of this court had been that the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of the offending vehicle.

In *Shankarayya v. United India Insurance Co. Ltd.*, 1998 ACJ 513 (SC), it was held that an insurance company when impleaded as party by the court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless this procedure is followed, the insurance company

cannot have a wider defence on merits than what is available to it by way of statutory defences. In absence of the existence of the conditions precedent mentioned in section 170, the insurance company was not entitled to file and appeal on merits questioning the quantum of compensation.

In *Narendra Kumar v. Yarenissa*, 1998 ACJ 244 (SC), question arose whether there can be a joint appeal by the insurer and owner of the offending vehicle. It was held that even in the case of a joint appeal by the insurer and the owner of an 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. In the said case, it also held thus:

“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 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 (2A) of section 110-C of the Act.”

In *Chinnama George v. N. K. Raju*, 2000 ACJ 777 (SC), it was held that if none of the conditions as contained in sub-section (2) of 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 *Rita Devi v. New India Assurance Co. Ltd.*, 2000 ACJ 801 (SC), it was held that the insurer having not obtained permission under section 170 of 1988 Act, is not entitled to prefer any appeal to the High Court against the award given by the Tribunal on merits.

However, in *United India Insurance Co. Ltd. v. Bhushan Sachdeva*, 2002 ACJ 333 (SC), it was held that where the insured fails to file an appeal to the High Court against the quantum of compensation awarded by the Tribunal, the insurer is entitled to file an appeal as the insured has failed to contest the claim and in that view of the matter, the insurer could be a person aggrieved. This is the only decision which has taken a contrary view to the consistent view of this court in regard to maintainability of appeal at the instance of an insurer. In our view, the decision in *United India Insurance Co. Ltd. v. Bhushan Sachdeva* (supra), does not lay down correct view of law for the reasons stated hereinafter.

It was urged by learned counsel appearing for the insurance company that if an insured has not filed any appeal, it means he has failed to contest the claim and that the right to contest include the right to contest by filing an appeal against the award of the Tribunal as well, and in such a situation an appeal by the insurer questioning the quantum of compensation would be maintainable.

We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting section 149 of the Act that

the victims of motor vehicle accidents are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in section 149 (2) of the Act or where the condition precedent specified in section 170 is satisfied.

For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) 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 also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in section 170 are satisfied and the award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to section 170 of the 1988 Act, the same would go contrary to the scheme and object of the Act.

This matter may be examined from another angle. The right of appeal is not an inherent right or common law right, but it is a statutory right. If the law provides that an appeal can be filed on limited grounds, the grounds of challenge cannot be enlarged on the premises that the insured or the persons against whom a claim has been made has not filed any appeal. Section 149 (2) of 1988 Act limits the insurer's appeal on those enumerated grounds and the appeal being a product of the statute, it is not open to an insurer to take any other plea other than those provided in section 149 (2) of 1988 Act. The view taken in *United India Insurance Co. Ltd. v. Bhushan Sachdeva*, 2002 ACJ 333 (SC), that a right to contest would also include the right to file an appeal is contrary to well established law that creation of a right to appeal is an act which requires legislative authority and no court or Tribunal can confer such right, it being one of limitation or extension of jurisdiction. Further, the view taken in *United India Insurance Co. Ltd. v. Bhushan Sachdeva* (supra) that since the insurance companies are nationalised and are dealing with public money/funds and to deny them the right of appeal when there is a collusion between the claimants and the insured would mean draining out or abuse of public fund is contrary to the object and intention of Parliament behind enacting Chapter XI of 1988 Act. The main object of enacting Chapter XI of 1988 Act was to protect the interest of the victims of motor vehicle accidents and it is for that reason the insurance of all motor vehicles has been made statutorily compulsory. Compulsory insurance of motor vehicle was not to promote the business interest of insurer engaged in the business of insurance. Provisions embodied either in 1939 or 1988 Act have been purposely enacted to protect the interest of travelling public or those using road from the risk attendant upon the user of motor vehicles on the roads. If law would

have provided for compensation to dependants of victims of motor vehicle accident, that would not have been sufficient unless there is a guarantee that compensation awarded to an injured or dependant of the victims of motor accident shall be recoverable from person held liable for the consequences of the accident. In *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan*, 1987 ACJ 411 (SC), it was observed thus:

"In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore, to be interpreted in the twilight of the aforesaid perspective."

We have noticed the legislative development in regard to third party rights in England and found that the object of those legislation was to protect the interest of third party rights. The 1939 Act as well as 1988 Act both were enacted on pattern of English statute with the object to relieve the distress and miseries of victims of accidents and reduce the profitability of the insurer in regard to occupational hazard undertaken by them by way of business activities and not to promote business interests of insurance companies even though they may be nationalised companies.

For the aforesaid reasons, as well as that the learned Judges in *United India Insurance Co. Ltd.*, 2000 ACJ 333 (SC), have failed to notice the limited grounds available to an insurer under section 149 (2) of the Act, we are of the view that the decision in *United India Insurance Co. Ltd.* (supra) does not lay down the correct view of law.

It was then urged that if there is a collusion between the claimants and the insured or the insured does not contest the claim and the Tribunal does not implead the insurance company to contest the claim on grounds available to the insured or the persons against whom claim has been made, or in such a situation when the insurer files an application for permission to contest the claim on merit and the same is rejected or where claimant has obtained an award by playing fraud, in such cases the insurer has a right of appeal to contest the award on merits and the appeal would be maintainable.

We have already held that unless the conditions precedent specified in section 170 of 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the grounds available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits, in that case, it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case, where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing an appeal on grounds specified in sub-section (2) of section

149 of 1988 Act. But such application for permission has to be *bona fide* and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer *resintegra* that fraud vitiates the

entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under section 173 of 1988

Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle.

## INSURANCE INSTITUTE OF INDIA GOLDEN JUBILEE YEAR 1955 - 2005

The Golden Jubilee year of the Institute which was established on 30th June, 1955, was ushered in at a meeting of the staff of the Institute on 30th June 2004.

Sarvashri M.G. Diwan, S. Balachandran, V.H.P. Pinto and B.A. Pathak addressed the meeting.



Shri S. J. Gidwani lighting the traditional lamp  
Shri M.G. Diwan (at extreme left)  
Shri S. Balachandran (at centre)



Shri M.G. Diwan addressing the meeting



Office Staff

## Supreme Court of India

### Supe Dei and others ..... *Appellants*

v.

### National Insurance Co. Ltd. and another ..... *Respondents*

#### JUDGEMENT

1. Leave granted.
2. The claimants in this case have filed this appeal for compensation under the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') assailing the judgements of the High Court of Karnataka in M.F.A. No. 4537 of 1999 (MVC) along with Cross-Appeal No. 26 of 2000 (MVC) in which the compensation awarded by the Motor Accidents Claims Tribunal has been reduced from Rs. 5,42,000 to Rs. 3,15,000.
3. Dhanurjaya Suna, the victim of the accident was aged about 32 years on the date of the accident, i.e., 11.8.97. He was multiplier of 15 as fixed by the Tribunal. The total compensation amount payable to claimants was determined as Rs. 3,15,000. Both the Tribunal and High Court awarded 6 per cent interest per annum on the compensation from the date of making the claim till the date of realization.
4. By the order passed on 3.9.2001 this court had issued notice, to the respondents limited to the question of appropriate multiplier to be applied in the case. Therefore, learned counsel for the parties confined their submissions to the question of appropriate multiplier and the rate of interest on the compensation awarded.
5. Ms. Kiran Suri, learned counsel for the appellants contended that 17 should have been taken as the appropriate multiplier in the case as that is the multiplier prescribed under the Second Schedule to the Act. Her further contention is that neither the Tribunal nor the High Court has given any reason why the multiplier of 17 could not be accepted as the appropriate multiplier, and instead 15 should be taken as the multiplier applicable in the case. The further contention of Ms. Suri is that the rate of interest awarded in all such cases under the *Motor Vehicles Act* is 9 per cent per annum and here also no reason has been stated in the award and the judgement as to why it should be reduced to 6 per cent per annum in this case.
6. The learned counsel appearing for the respondent, insurance company, fairly stated that according to the age of the deceased as found by the Tribunal, the multiplier of 17 is to be applied as provided in the Second Schedule to the Act. It is not disputed that though the Second Schedule to the Act in terms does not apply in the case since the claim is not made under section 163-A of the Act, it serves as a guideline for the purpose of determination of a gas-cutter in Jindal Vijayanagar Steel at Sandur Taluka, in Bellary District of the State of Karnataka. He was drawing a salary of Rs. 2,015 per month and including the overtime allowance his monthly income was about Rs. 4,000. The Tribunal, for the purpose of determination of compensation, had taken the monthly income of the deceased as Rs. 4,000, had applied the multiplier of 15 and awarded a sum of Rs. 5,42,000 as compensation. The High Court on appeal by the owner and insurer of the vehicle, excluded the overtime allowance from the monthly income and determined net income of the deceased at Rs. 1,515 per month and maintained the compensation under section 166 of the Act.
7. On consideration of the submissions made by the learned counsel for the parties and on perusal of the judgement of the Tribunal and the High Court, we find ample substance in the contention raised by Ms. Suri that no reason has been stated by the Tribunal or the High Court for fixing 15 as the multiplier.
8. While considering the question of just compensation payable in a case all relevant factors including the appropriate multiplier are to be kept in mind. The position is well settled that the Second Schedule under section 163-A to the Act which gives the amount of compensation to be determined for the purpose of claim under the section can be taken as a guideline while determining the compensation under section 166 of the Act. In that view of the matter, there is no reason why multiplier of 17 should not be taken as the appropriate multiplier in this case.
9. Coming to the question of interest this court in the case of *Kaushnuma Begum v. New India Assurance Co. Ltd.*, 2001 ACJ 428 (SC), observed that 9 per cent is the appropriate rate of interest to be awarded and that rate is being applied in motor accident compensation cases.
10. Therefore, the claimants will be entitled to the compensation applying 17 as the multiplier and interest at the rate of 9 per cent per annum will be paid on the sum so calculated from the date of filing of the claim petition till realisation. The order of the Tribunal and the judgement of the High Court are modified to the extent as above.
11. The appeal is disposed of accordingly. There shall be no order as to costs.

## National Consumer Disputes Redressal Commission

United India Insurance Co. Ltd. .... *Petitioner*

v.

Gurubachan Kaur ..... *Respondents*

**C**onsumer Protection Act, 1986, sections 2 (1) (g) and 14 (1) (d) - Deficiency in service - Compensation - Insurance - Delay in settling claim - Insurance company contended that complainant has given full and final settlement receipt in discharge of the claim - Claim was not settled for two years - Whether insurance company was deficient in its service in delaying settlement of the claim - Held : yes; order of State Commission to pay interest on the claim amount till payment upheld; however, rate of interest reduced to 12 per cent till payment upheld; however, rate of interest reduced to 12 per cent from 18 per cent Case referred:

*United India Insurance Co. Ltd. v. Ajmer Singh Cotton & General Mills*, 1999 CCJ 11 58 (SC).

### ORDER

Mr. Justice D.P. Wadhwa, President - Petitioner was the opposite party in the complaint filed by the respondent before the District Forum. Complaint was for award of interest on an insurance claim on the death of husband of the respondent. Alla Singh, husband of the respondent died on 1.4.91. He was having insurance cover with the petitioner for Rs. 7,45,000. It would appear the claim was settled and payment of Rs. 7,45,000 made on 14.7.1993. Petitioner gave a receipt for having received the amount in full and final settlement of her claim. This is a printed receipt obtained by the petitioner while making the payment. On the receipt it was not written that the respondent received payment under any protest. However, it was found that she did protest by writing letter to the petitioner that she should have been paid interest as claim was denied for two years.

2. The case of the petitioner is that once full and final settlement receipt is given in discharge of any claim of the respondent against the petitioner, it could not be said that there was any deficiency in service and complaint could not have been filed before the District Forum. Petitioner, however, referred to a judgment of the Supreme Court in the case of *United India Insurance Co. Ltd. v. Ajmer Singh Cotton and General Mills*, 1999 CCJ 1158 (SC), to contend that it could not be always so and the circumstances of each case has to be seen. Stand of the respondent would, however, be tenable only if she proves that discharge voucher was obtained by fraud or coercion, etc. For two years insurance claim to the respondent in respect of two insurance policies of her husband had admittedly been due to her. It could be said that the receipt which is printed receipt was obtained by exercise of coercion by the petitioner

from the respondent. This, of course, is fortified by the fact that respondent had been protesting by writing letters and claiming interest. Moreover, it also does not appear to us why claim was denied to the respondent for two years. It was certainly a case of harassment and inconvenience to the widow. Both the District Forum and the State Commission have returned the finding of deficiency in service by the petitioner insurance company and the fact of respondent protesting for nonpayment of interest which in the circumstances of the case was legally due to her. District Forum allowed the complaint and awarded interest at the rate of 18 per cent per annum of the amount of Rs. 7,45,000 w.e.f. 1.6.91 till the date of payment. Cost of Rs. 1,100 was also imposed. Two months' time for the petitioner to settle the claim was considered sufficient. Death occurred on 1.4.1991 and the interest was payable from 1.6.1991.

However, on appeal filed by the petitioner before the State Commission, interest was reduced from 18 per cent to 12 per cent per annum. We do not find any error in the reasoning of the State Commission for us to take a different view in exercise of our jurisdiction under clause (b) of section 21 of the *Consumer Protection Act*. This revision petition is dismissed with counsel fee of Rs. 2,000.

## National Consumer Disputes Redressal Commission

Integra Securities Ltd.

v.

Oriental Insurance Co. Ltd. and another ..... *Opposite Parties*

**C** Consumer Protection Act, 1986, section 2 (1) (c)-Complaint-Maintainability of - Complicated issues - Failure to indemnify the loss caused on account of counterfeit securities as per policy - Complaint involves various complicated issues including identity of the person who sold the securities and there are as many as 125 documents - Whether a complaint of this nature is maintainable before Consumer Forum in the absence of proper infrastructure - Held : no.

### ORDER

Mr. Justice D.P. Wadhwa, President - In this complaint filed under section 21 of the Consumer Protection Act, 1986, complainant claimed Rs. 23,72,342 with interest at the rate of 18 per cent per annum from the date of claim till realisation of the amount. Further sum of Rs. 5,00,000 is also claimed for extreme loss and harassment as a result of deficiency of service resulting from undue delay on the part of the opposite party in not settling the claim.

2. Complainant is a Trading Member of National Stock Exchange of India Limited. It is registered with SEBI having registration No. INB 230874633 and is covered under the stock brokers indemnity insurance policy. Complainant is holder of policy under the stockbroker and indemnify policy issued by the opposite party insurer. The insured amount is Rs. 25,00,000. When the complainant advanced its claim of Rs. 23,72,342 for loss suffered by it on account of counterfeit securities introduced by one R.C. Gupta, proprietor of Esteem Financial Services, it was rejected by the opposite party which approved the loss only to the extent of Rs. 32,729 in full and final settlement of the claim of the complainant. While the complainant's case is that R.C. Gupta was its client, the case of the insurer is that he was a sub-broker. Complainant had also lodged police report against R.C. Gupta for cheating committed by him. Various documents will have to be gone into if R.C. Gupta was client of the complainant or only a sub-broker. This contention of the complainant that R.C. Gupta was introduced to it by one Anil Chandani, a senior employee of the complainant's group concern, will have to be examined when complainant has referred to an agreement with said R.C. Gupta. A dispute may also arise if

the shares sold by R.C. Gupta was stolen property. There is a great deal of controversy involved in the present complaint. Along with the complaint there are as many as 125 documents. Evidence will have to be led. Complaint does raise complex questions of law and facts. We will have also to examine the provisions of SEBI Act and rules framed thereunder. National Commission is presently not equipped to deal with such type of cases. Not that the National Commission has no case involving complex and complicated question of law and facts and there are numerous of them but considering the lack of staff and poor infrastructure resulting in huge pendency, it is not possible for this Commission to add to its list more such cases. Otherwise, it will defeat the very purpose and object of the Act. In cases involving medical negligence which require full scale trial including the cross-examination of experts, this Commission invariably entertains these complaints, but in a case like the present one, complainant can certainly knock at the doors of a civil court or any other Forum.

3. This complaint is returned to the complainant for presentation before the appropriate Forum, if so advised.

Orders accordingly.

## National Consumer Disputes Redressal Commission, New Delhi

L.I.C. of India and another ..... *Petitioners*

v.

Laxmi Patnaik and another ..... *Respondents*

**C**onsumer Protection Act, 1986, section 2 (1) (g)-Deficiency in service-Life insurance-Salary Savings Scheme-Repudiation of claim-LIC contended that policy lapsed for non-payment of premium-Employer of the assured failed to deduct premium from salary and remit to LIC as per the scheme-Neither employer nor LIC gave any notice for non-payment of premium to the assured-Whether LIC and employer are liable for making payment under the policy-Held: yes [1999 CCJ 1465 (SC) followed].

### CASE REFERRED :

Delhi Electric Supply Undertaking v. Basanti Devi, 1999 CCJ 1465 (SC).

### ORDER

Mr. Justice J.K. Mehra, Member- This is a revision petition filed by Life Insurance Corporation of India against the complainant and Orissa Forest Corporation Ltd., the employer of the deceased assured. The facts of the case have been discussed in detail in the impugned order which was passed on appeal by the complainant. The facts of this case are similar to the case which came up before the Hon'ble Supreme Court in Delhi Electric Supply Undertaking v. Basanti Devi, 1999 CCJ 1465 (SC). There was a Salary Savings Scheme of LIC whereby the employer was to deduct premium every month from the salary of the employee and remit it to LIC and LIC was paying certain commission to employer for this service. The assured was taken ill and died after hospitalisation. During long period of absence, though salary was paid to him but the leave was granted to him *ex post facto* and all the salary for the leave period was released to him. However, the employer did not carry out deduction from that salary and remit the same to LIC for a period of 8 months. As a consequence thereof, the policy lapsed. No notice of non-payment was given to the assured either by the employer or by LIC nor did LIC send any notice to the employer. In the light of this, the District Forum decreed the claim holding both the employer and LIC liable to make payment under the policy. As the employer was acting for carrying out deduction from the wages and remit to LIC on behalf of LIC

and to that extent it was acting as agent of LIC. The State Commission has further noted that neither LIC nor the employer challenged the decision of the District Forum but that decision was reviewed on appeal by the complainant and it came to the conclusion that the amount of the policy was payable by the insurer to the complainant but it authorised LIC to recover the premium in default out of the amount payable. When this decision of the State Commission was announced the judgement of the Hon'ble Supreme Court in Delhi Electric Supply Undertaking v. Basanti Devi, referred to herein above had not yet been rendered. However, the position stands fully explained and the law has since been clarified on the point and the employer, in such circumstances, held to be agent of LIC. From the facts that during the default in payment of premium no deductions were made from the salary it being not a case where no salary was payable for any period there appears to be a deficiency. In the light of the discussion above, there is no warrant for us to interfere with the findings of the State Commission under section 21 (b) of the Consumer Protection Act. The order of the State Commission is upheld and the revision petition is dismissed.

Revision petition dismissed.

## National Consumer Disputes Redressal Commission, New Delhi

New India Assurance Co. Ltd. .... *Appellant*

v.

Lalit M. Bhambani and another .... *Respondents*

**C**onsumer Protection Act, 1986, section 2 (1) (g)-Deficiency in service-Insurance-Mediclaim policy-Non-settlement of claim-Insurance Company contended that complainant suppressed facts regarding diabetes and hypertension in the proposal form but failed to prove the same-Policy was taken on 12.5.1989, whereas the claim relates to the period of August, 1990 and such occurrence after 15-16 months of the proposal form could not qualify as 'immediate' - Whether the insurance company was deficient in its service in not settling the claim - Held : yes; order directing the insurance company to pay Rs. 59,588 with 18 per cent interest upheld.

### ORDER

Mr. B.K. Taimni, Member - Appellant, New India Assurance Co. Ltd., has filed this appeal against the order of the State Commission passed on 13.1.1994 in Complaint No. 169 of 1992 deciding the appellant to settle the claim under mediclaim policy with the respondents-complainants by paying Rs. 59,588 with interest at the rate of 18 per cent for 8.8.1990 along with costs of Rs. 500.

2. Brief facts of the case are that the respondents-complainants had a mediclaim policy effective from 12.5.1989 for one year which was further renewed for one year from 12.5.90 to 11.5.1991. In July, 1990, respondent-complainant No. 2 was admitted in the hospital twice, once in July, 1990 and again in August, 1990 with heart problem and angioplasty, respectively for which, a total expenditure of Rs. 59,588 was incurred and upon filing a claim with the appellant, who did not settle the claim on the ground that the respondent-complainant is guilty of not describing material facts and fraudulently suppressing the facts that the respondent-complainant was suffering from diabetes and hypertension prior to the obtaining of mediclaim policy. Since the claim was not getting settled, respondent-complainant filed a complaint before the State Commission who after hearing both the parties and after hearing both the parties and after perusal of material on record directed the appellant company to give reliefs to the respondents-complainants already enumerated above.

3. The main grounds of appeal are that as per material on record obtained by the appellant company, respondent-complainant No. 2 was suffering from diabetes mellitus, hypertension and tuberculosis which were not disclosed by him in the application form for obtaining mediclaim policy. Appellant company produced certain unauthenticated record of Nanavati Hospital, which was not relied upon by the State Commission. We also find ourselves unable to consider this unauthenticated material on record as any proof in support of contentions of the appellant. Record procured from Hinduja Hospital also does not keep them much as it states patient diabetes since 1982, high blood pressure.

4. Key issue is not what ailments he had but key lies in the fact whether the respondent-complainant No. 2 gave any information which he ought to have given as per the proforma of the appellant company. Question Nos. 10 and 11 of the proposal form are the relevant ones:

*Question No. 10 reads as under :*

"Details of knowledge of any positive existence or presence of any ailment, sickness or injury which may require medical attention in immediate future."

Question No. 11 reads as under :

"Details of medical treatment/surgical operation during preceding 12 months.

Nature of treatment -  
Period of treatment -  
Doctor-"

Answer given by the respondent-complainant was 'No' and 'Nil', respectively.

We do not find any material, evidence or proof on record rebutting the answers given by the respondent-complainant. Answer to question No. 11 is clearly 'Nil'. Answer to question No. 10 is quite correct as we see the quantifying clause is...may require attention in immediate future. This is not borne by the instant case. Respondent-complainant obtained the policy on 12.5.1989 and claim relates to the period of July/August, 1990. By no stretch, could this be stated that he required attention in immediate future, policy having been taken on 12.5.1989, i.e., when the proposal form was filled in. An occurrence after 15-16 months of the proposal form could not qualify as 'immediate'. Thus, on both grounds the petitioner fails to satisfy us that the respondent-complainant gave any incorrect information as per the proposal form.

5. It was also argued by the learned counsel for the appellant company that as stated before the State Commission, the claim can be settled at Rs. 38,952 which according to them is as per the terms of the policy. We have gone through the policy and find that there is nothing in it to prevent the appellant company to settle the claim at just amount of claim.

In the light of the above discussion, we do not find any merit in the appeal and the same is dismissed. No order as to costs.

## The Workmen's Compensation (Amendment) Act, 2000 (No. 46 of 2000)

# A

An Act Further to amend the Workmen's Compensation Act, 1923.

Statement of Objects and Reasons.- The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen or their dependants in case of personal injury caused by accident or certain occupational diseases arising out of and in the course of employment and resulting in disablement or death. The Act, at present, applies to railway servants and persons employed in certain hazardous employments specified in Schedule II of the Act.

2. Based on the recommendations of the Standing Committee of Parliament on Labour Welfare, the Act is being made applicable to all causal workers by deleting the brackets and words "(other than a person whose employment is of causal nature and who is employed otherwise than for the purposes of the employer's trade or business)" from section 2 (1) (n) of the Act.

3. The Act was last amended in 1995. Since then, there has been general increase in price of goods and commodities. The Standing Committee of Parliament on Labour and Welfare has also made certain recommendations for enhancement in the amount of compensation payable under the Workmen's Compensation Act. These recommendations were examined in consultation with the State Government and Union Territory Administrations. Keeping in view the recommendation of the Standing Committee of Parliament and suggestion received from the State Government, it is proposed to carry out the following amendments in the Act, namely :

i) The minimum amount of compensation for death is being enhanced from Rs. 50,000 to Rs. 80,000 and that for permanent total disablement from Rs. 60,000 to Rs. 90,000;

ii) The ceiling on monthly wage prescribed in Explanation 11 below section 4 (1) (b) for determining the maximum amount of compensation is being enhanced from Rs. 2,000 to Rs. 4,000;

iii) The amount of funeral expenses payable under section 4 (4) is being enhanced from Rs. 1,000 to Rs. 2,500.

4) In the case of undue delay in payment of compensation, the employer under section 4-A (3) of the Act is also liable for payment of interest and penalty up to fifty per cent of the amount of compensation. At present interest is payable to the workman or dependants and the penalty is being credited to State Government. There have been representations for making the penalty also payable to the workman or dependants. Accordingly, it is proposed to amend section 4-A (3) so as to make the penalty also payable to the workmen or dependants.