NATIONAL INSURANCE COMPANY LTD. A

v.

MEGHJI NARAN SORATIYA & ORS.

(Civil Appeal No. 1171 of 2002)

FEBRUARY 26, 2009 B

[R. V. RAVEENDRAN AND H.L. DATTU, JJ.]

Motor Vehicles Act, 1988:

ss. 149(2) and 170 – Permission granted by Tribunal to insurer to contest the claim – HELD: On facts, does not call for interference – If the order granting permission required reasons to be recorded, on challenge, High Court could either set aside the permission granted with a direction to Tribunal to pass a reasoned order or itself consider whether the case warranted permission – But under no circumstance permission by Tribunal to contest the claim can be equated to or treated as denial of permission merely on the ground that reasons were not recorded – Judicial notice can also be taken of false claims by claimants in collusion with owners/ drivers of vehicle and/or police and/or doctors – In such cases, it is the insurer which is to bear the liability statutorily or contractually – Such matters invite serious consideration by Parliament and Law Commission to give the insurer direct right to contest the claim on merits without technical requirement of permission – Legislation – Need for – Judicial Notice. C D E F

Fatal accident – Compensation – Computation of – Age of deceased assessed 55-58 years – Claim by son and daughter-in-law – Tribunal deducting 1/3rd of salary towards personal expenditure, applying multiplier of 10 and allowing interest at 15% - HELD: Multiplier of 10 justified – But 50% and not 1/3rd to be deducted towards personal and living expenses of deceased – Interest at 9% would be appropriate. G

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A *Fatal accident – Compensation – Computation of – Deceased bus conductor earning Rs.3600/- per month at the time of accident – Pursuing Master's course – Tribunal assuming higher monthly income at Rs.5000/- after completing studies – Keeping in view the age of dependent* B *wife as 22 years and minor children aged three and one year and the parents, Tribunal applying multiplier of 16 – Interest allowed at 15% - HELD: In view of the higher qualification, Tribunal justified in assuming higher income instead of actual income – But, such assessment should be realistic and should* C *be close to actual income – On facts, income taken as Rs.4000/- per month – Multiplier of 17 to be applied – One-fourth to be deducted towards personal and living expenses – Interest reduced to 9%.*

General Manager, Kerala State Road Transport Corpn. D *v. Susamma Thomas* **1994 (2) SCC 176;** *U.P. State Road Transport Corpn. v. Trilok Chandra* **1996 (4) SCC 362 and** *Sarala Dixit v. Balwant Yadav* **AIR 1996 SC 1274, referred to.**

E **Case Law Reference:**

1994 (2) SCC 176	**referred to**	**para 12**
1996 (4) SCC 362	**referred to**	**para 12**
AIR 1996 SC 1274	**referred to**	**para 16**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1171 of 2002.

From the Judgment & Order dated 28.12.1999 of the High G Court of Gujarat at Ahmedabad in First Appeal No. 4994 of 1999.

Minakshi Vij for the Appellant.

The following Order of the Court was delivered :

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R.V. RAVEENDRAN, J. 1. The insurer has challenged the dismissal of its appeals (against the awards of Motor Accident Claims Tribunal), by the Gujarat High Court on the sole ground that the Tribunal while granting permission to the insurer to contest the claim under Section 170 of the Motor Vehicles Act, 1988 ('Act' for short) did not assign reasons for granting permission.

2. Chapter XII of the Act relates to Claims Tribunals. Chapter XI relates to insurance of motor vehicles against third party risks. The scheme, in particular, the provisions of section 170 read with section 149, contemplate the claimants in a motor accident claim filing the claim petition against the driver and owner of the motor vehicle. The claimants are required to furnish the particulars relating to insurance and the name and address of the insurer, but are not required to implead the insurer as a party to the proceedings. Having regard to the statutory obligation imposed on the insurer to satisfy judgments and awards against persons insured in respect of third party risks, the tribunal is required to issue notice to the insurer about the initiation of the claim proceedings. When such notice is given, the insurer can seek impleadment only for the limited purpose of defending the action on the grounds mentioned in sub-section (2) of section 149, that is, breach of a specified condition of the policy by the insured (owner of the vehicle) or voidness/invalidity of the policy by reason of the policy having been obtained by non-disclosure of material facts or by representation of any fact which was false in some material particular. An insurer is not entitled to contest the claim on merits when it received such notice under section 149(2).

3. However, section 170 of the Act requires the Tribunal to implead the insurer as a party to contest the claim in the following two circumstances, where it is satisfied that : (a) there is collusion between the persons making the claim and the person against whom the claim is made; or (b) the person

A against whom claim is made, failed to contest the claim. The Tribunal is required to record the reasons in writing while directing the insurer who may be liable in respect of such claim to be impleaded as a party to the proceedings. On being so impleaded in pursuance of an order under section 170 of the
B Act, the insurer, without prejudice to the provisions contained in sub-section (2) of section 149, has 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.

4. Thus, the insurer has two distinct and
C compartmentalised rights, while defending against claims. First is where it wants to repudiate or deny liability as insurer, either on the ground that there is a breach of a specified condition of the policy or on the ground that the policy itself is void. Participation under section 149(2) is only to repudiate or deny
D its liability under the insurance policy. Neither the issue of liability of the driver/owner nor the issue of quantum of compensation can be the subject matter of contest by the insurer who is served a notice under section 149(2). Second is where the insurer is impleaded as a respondent with the right to contest the claim
E even on merits, either on account of the Tribunal being satisfied that there is collusion between the claimants and the owner/driver, or on account of the owner/driver who have been impleaded as respondents, failing to contest the proceedings. When the insurer is impleaded and permitted to contest under
F section 170 of the Act, it can contest either the quantum of compensation claimed or even the liability of the driver/owner to pay compensation. This is in addition to, and without prejudice to its statutory right under section 149(2) to repudiate or deny its liability.

G 5. Section 170 therefore proceeds on the assumption that the insurer will not be a party to the claim proceedings and requires for the Tribunal to implead it as a party to contest the claim on merits in the two circumstances mentioned therein, namely (a) collusion between claimants and driver/owner; and
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(b) non-contest by driver/owner. Where the insurer is not a party, and it becomes necessary to implead the insurer as a party-respondent under section 170 of the Act, with right to contest the claim on merits, either on the application of the insurer or *suo moto*, the Tribunal has to make a brief order recording reasons showing that either of the two conditions mentioned in the section are satisfied for impleading the insurer as a party.

6. But in practice, virtually in all claim petitions, the insurer is impleaded as a party respondent alongwith the driver and owner. Consequently, many Tribunals instead of issuing the special notice under section 149(2) notifying the insurer of the lodging of a claim against the insured (so as to give the insurer an option to deny the validity of the policy or repudiate its liability under the policy under any of the grounds mentioned in section 149(2) of the Act), issues regular notice to the insurer. As a result, in practice the insurers file their reply in all claim petitions. They raise the grounds available under section 149(2), if such grounds exist. Otherwise they generally traverse the averments in the claim statement, though not permitted to contest on merits. But where one of the two circumstances mentioned in section 170 exists, that is collusion or non-contest on the part of driver/owner, then the insurer who is already a party, files an application under section 170 of the Act seeking permission to contest, which is routinely granted. Where the insurer is already a party respondent in the claim petition and it makes an application seeking permission to contest the claim on merits on the ground that the driver and owner have failed to contest the claim, even a one-line order or non-reasoned order may be sufficient as the Tribunal can satisfy itself about the need to grant the permission by a perusal of the record, without anything more. But where the driver/owner are defending the claim, but the insurer seeks permission on the ground that there is collusion between the claimants and the driver/owner, it may be necessary for the tribunal to record reasons to show that it is satisfied that there is collusion, before granting permission. Where applications under section 170 of

A the Act filed by the insurer specifically alleged that the driver/ owner failed to contest the claim and therefore it was seeking permission, the same is verifiable from the record. On such verification, the Tribunal may pass a separate order or even endorse the order "granted" on the application itself. Even if any B reason was to be recorded, all that the Tribunal is required to say is : "Permission is granted as driver/owner have failed to contest the claim". In such cases, failure to record reasons can not render the order invalid or illegal as the record on the face of it would show the claim was not being defended by the driver/ C owner. Procedural requirements should not be stretched to absurd levels to defeat the ends of justice itself.

7. There is a prevalent view that a rethink on sections 149 and 170 of the Act is necessary. As noticed above, Sections 149 contemplates claim petitions being filed only against the D driver and the owner, and the driver/owner alone contesting the claim on merits. The insurer is required to satisfy the award made by the Tribunal, even if it is not impleaded as a party to the claim proceedings. But in practice, the insurer is invariably made a party to the claim proceedings, presumably to avoid E any kind of delay. It is also a reality that drivers who are primarily liable seldom contest the proceedings either because of their financial incapacity or because they know that the burden will be borne vicariously by the owner and by the insurer under the policy of insurance. It is also a reality that many of the owners F do not appear and contest the claim proceeding, or even if they appear and file a reply, do not defend the claim by effectively cross-examining the claimant's witnesses and by leading defence evidence. Owners are complacent as they have an insurance cover and know that the insurer will bear the liability. G In practice therefore the insurer has to keep on goading the owner to contest the matter and place necessary evidence. Section 170 provides that if the driver/owner fail to contest the claim, the Tribunal may permit the insurer to contest the claim. But what, if the driver/owner file a reply but fail to effectively H participate in the proceedings? What if the counsel for driver/

owner are present but resort to only cursory cross-examination? What if the driver/owner do not at all lead defence evidence? What if there is a well-planned collusion that does not meet the eye? Where the insurer does not get permission under section 170, there is a reasonable chance of the defence to the claim being far from satisfactory. Judicial notice can also be taken of the fact that there have been several false claims by claimants in collusion with the owners/drivers of vehicle and/or Police and/or doctors. The question raised is whether it is proper to prohibit the insurer, which is to bear the liability statutorily and contractually, from participating in the process of adjudication of liability and assessment of compensation? Or the statute having made the insurer directly liable to the claimants, should the insurer be given a direct right to contest the claim on merits without the technical requirement of permission? Should the insurer always be at the mercy of the owner to contest the claim ? These are matters that invite serious consideration, particularly by the Parliament and Law Commission and other stake-holders. Be that as it may.

8. Coming to these cases, we are satisfied that the grant of permission by the Tribunal to the insurer to contest the proceedings does not call for interference. In the first case, both the driver and owner, though served, remained absent and did not contest the claim. In the second case, the driver was deleted from the array of parties as he could not be served and the owner entered appearance, but did not file statement of objections or contest the claim. The insurer specifically alleged in the applications under section 170 that the driver/owner failed to contest the claim and therefore it was seeking permission.

9. Even assuming that order granting permission required recording of reasons, if the order failed to record reasons on being challenged, the High Court could either set aside the permission granted, with a direction to the Tribunal to reconsider the applications and pass a reasoned order, or in

A special circumstances, itself consider whether the case warranted the grant of permission and decide the question. But under no circumstances, the Tribunal's permission to contest the claim, can be equated to or treated as denial of permission to contest the claim, merely on the ground that reasons were B not recorded. Further, where the order granting the permission to contest is not challenged at all, the High Court can not dismiss the appeal filed by the insurer on merits, on the ground that Tribunal did not assign reasons while granting permission under Section 170 of the Act. Consequently, the orders of the C High Court dismissing the appeals only on the ground that the Tribunal did not record reasons for granting permission, are liable to be set aside.

10. Having regard to the fact that the two appeals relate to accidents which took place in the years 1991 and 1996 and D the appeals have been pending in this Court for nearly seven years, we propose to consider and dispose of the appeals on merits, instead of relegating the parties to one more round of litigation before the High Court.

E **Civil Appeal No. 1171/2002**

11. The claim related to the death of a mason aged 58 years in a motor accident which occurred in the year 1991. His son and daughter-in-law were the claimants and claimed a F compensation of Rs. 3 lakhs. The Tribunal after considering the evidence, held that the deceased was aged 55 to 58 years, that his income was Rs. 2,250/- per month and that he was contributing Rs.1500/- per month to the family. It however restricted the annual loss of dependency to Rs.15,000/- instead of Rs.18000/- and by applying a multiplier of 10, arrived at the G loss of dependency as Rs. 1,50,000/-. It awarded Rs. 15,000/ - towards loss of estate, Rs. 5,000/- for funeral expenses, Rs.5,000/- towards medicines/treatment (as the deceased underwent treatment for a short period in a hospital before death). Thus it determined the compensation payable as Rs.

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1,75,000/- and awarded the same with interest @ 15% per annum from the date of petition. A

12. The learned counsel for the appellant submitted that when there was no clear and conclusive evidence that the married son and daughter-in-law were dependent on the deceased, the Tribunal erred in restricting the deduction towards the living/personal expenses of the deceased to only one-third. He also submitted that award of Rs. 15,000/- towards loss of estate was excessive. There is some merit in the said contentions. We will therefore reassess the compensation. The Tribunal found that the income of the deceased was Rs. 2,250/- per month or Rs.27,000/- per annum. There is no serious challenge to this finding. On the facts and circumstances of the case, 50% should have been deducted towards the personal and living expenses of the deceased and not one-third. Thus, the contribution to the family (or the saving by the deceased even assuming that the claimants were fully dependant) would have been Rs. 13,500/- per annum. There is nothing wrong in the multiplier applied (that is 10) as it is in consonance with the principles laid down in *General Manager, Kerala State Road Transport Corpn.* v. *Susamma Thomas* [1994 (2) SCC 176] and *U.P. State Road Transport Corpn. v. Trilok Chandra* [1996 (4) SCC 362]. Therefore, the total loss of dependency would be Rs. 1,35,000/-. By adding Rs.5,000/- each under the heads of loss of estate, funeral expenses and cost of treatment, the total compensation is determined as Rs. 1,50,000/-. B C D E F

13. We find that the award of interest at 15% per annum was excessive. We are of the view that award of interest at 9% per annum would be appropriate, just and reasonable.

14. We therefore, allow the appeal, set aside the order of the High Court and reduce the award to Rs. 1,50,000/- with interest at 9% per annum from the date of petition to date of deposit. G

A **Re : CA No. 1172/2002**

15. The claim related to the death of a bus conductor aged 23 years in a motor accident in 1996. The claimants were his widow aged 22 years, two minor children aged three years and one year and parents. The claimants stated that the deceased B was earning Rs. 3,000/- per month plus Rs.600/- as bhatta charges; that the deceased was pursuing his studies for Master's degree, and that he would have earned Rs. 5,000/- to 6,000/- by securing other employment, after completing his studies. The Tribunal held that the deceased would have earned C at least Rs. 5,000/- per month on completing his studies. After deducting one-third towards personal and living expenditure of the deceased, it arrived at the contribution to the family as Rs. 3334/- per month or Rs.48,008/- per annum. It applied a multiplier of 16 and arrived at the total loss of dependency as D Rs. 6,40,128/-. By adding Rs. 20,000/- towards loss of estate, Rs. 10,000/- towards loss of consortium and Rs. 2,000/- towards funeral expenses, the Tribunal determined the total compensation as Rs. 6,72,128/- and awarded the same with interest at Rs. 15% from the date of petition till the date of E deposit.

16. The learned counsel for the insurer submitted that in view of the admissions and evidence that deceased was getting a salary of Rs. 3,000/- , the Tribunal ought not to take F the income at a figure more than Rs. 3,000/- per month. But having regard to the fact that the claimants had produced evidence to show that the deceased had passed B.A. and was studying for securing a M.A. degree, we are of the view that the Tribunal was justified in assuming a higher income at the G time of death instead of the actual earning at the time of his death. But the amount assessed as income cannot be a fancy figure. It should be realistic and should be close to the actual earning (vide *Susamma Thomas* (supra) and *Sarala Dixit v. Balwant Yadav*, AIR 1996 SC 1274). On the facts and circumstances, we are of the view that the income should be H

taken as Rs. 4,000/- per month (Rs. 48,000/- per annum). Only one-fourth of the income (instead of the standard one-third) has to be deducted towards personal and living expenses of the deceased, having regard to his larger family. Thus the contribution to the family would have been Rs. 36,000/- per annum. By applying a multiplier of 17, the loss of dependency would be Rs. 6,12,000/-. By adding Rs, 5,000/- each under the heads of loss of estate, loss of consortium and funeral expenses, the total compensation would be Rs. 6,27,000/-. As the rate of interest awarded (15% per annum) is excessive, we reduce it to 9% per annum.

17. We accordingly allowed this appeal, set aside the order of the High Court and modify the award by reducing it to Rs. 6,27,000/- with interest at 9% per annum from the date of petition till date of relief. We direct that the compensation be apportioned in the ratio of 40% to the widow, 20% each to the two minor children and the mother. The Tribunal shall make appropriate consequential directions relating to bank deposits.

R.P. Appeal allowed.