

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 670 of 2016**

Cholamandalam M.S. General Insurance Company Limited
 ,through Branch Manager, 2nd Floor, Dera Road, 2 NSC
 Bose Road, Chennai 600001, Through Branch Office-
 Simran tower, 2nd Floor, Opp. LIC Office, Pandri, P.S.
 Pandri, Raipur (C.G.) (Insurer of Vehicle No. CG-04-D.R.
 8808, Policy No. TCH/97027073 validity date from
 22.2.2012 to 21.2.3013 Non-applicant No. 3

---- Petitioner**Versus**

1. Smt. Deepa Deshmukh, aged about 41 years, Wd/o Late Sunil Kumar Deshmukh
2. Ku. Annushree, D/o Late Sunil Kumar Deshmukh, aged about 16 years, Minor Through her mother Resp. No.1 Smt. Deepa Deshmukh, Both R/o Quarter No.119, C-Ruwabandha Sector, P.S. Bhilai, Kowali, Sector, Tahsil and Distt. Durg (C.G.)
3. Smt. Kanta Deshmukh, Wd/o Shri C.S. Deshmukh, aged about 66 years, R/o Qtr. No.1/L, Street No. 37, Sector 6, Bhilai, Tahsil and Distt. Durg (C.G.) (Claimants)
4. Banshi Ram, S/o Late Pratap, aged about 48 years, R/o Sharda Para, J.P. Nagar, Camp 2, Bhilai Thana Chhawani, Tahsil and Distt. Durg (C.G.) (Driver of Vehicle No. CG-04-DR-8808) Non-applicant No.1
5. A.E. Manojraja, S/o A.R. Edwin, aged about 50 years, R/o House No.1068, Kurudroad, Kohka, Thana Supela, Bhilai, Tahsil & Distt – Durg (C.G.) (Owner of Vehicle No. CG-04-DR-8808)

---- Respondents

For Petitioner: Mr. Rohitashva Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****06/04/2017**

(1) Appellant- Cholamandalam M.S. General Insurance

Company Limited calls in question the order passed by the learned Claims Tribunal by which its application under Section 170 of the Motor Vehicles Act, 1988 (for short "MV Act") seeking direction to contest the proceedings on merits has been rejected by the impugned order.

(2) In a claim petition filed by respondents No. 1 to 3/ claimants, the petitioner/Insurance Company filed an application under Section 170 of the MV Act on 20.01.2014 for granting permission to contest the proceedings of claim case on merits under Section 170 of the MV Act.

(3) The Claims Tribunal, by its impugned order dated 27.08.2016, has rejected the said application holding that though application was filed on 20.01.2014 but it was not pressed by the petitioner; owner & driver are contesting the proceeding of claim case continuously; and the collusion between the claimants and the owner & driver of the vehicle has not been established, against which the instant writ petition under Article 227 of the Constitution of India has been filed questioning the same.

(4) I have heard learned counsel appearing for the petitioner and perused the order impugned with utmost circumspection.

(5) At this stage, it would be appropriate to notice Section 170 of the Motor Vehicle Act, 1988 which reads as under:-

"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 subsection (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.”

(6) A bare perusal of the above-quoted provision would show that section 170 of the Act, 1988 lays down that where in the course of any inquiry, the Claims Tribunal is satisfied that there is collusion between the claimants and the person against whom the claim is made or where the person against whom the claim is made fails to contest the claim, it can direct the insurer to be impleaded as a party for reasons to be recorded in writing if that insurer may be liable in respect of such claim. The insurer so impleaded will have 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. Failure to obtain permission under section 170 of the Act, 1988 was uniformly held by law to be making any appeal by the insurer against the quantum of compensation incompetent and this incompetence is without prejudice to the provisions of section 149(2) of the Act, 1988. Section 149(2) of the Act, 1988 gives a right to the insurer to defend any claim or action on the ground of breach of specified conditions of the insurance policy enumerated in the provisions or on the ground of the policy being void due to having been obtained by non-

disclosure of a material fact or by a representation of fact which was false in some material particular. Section 170 of the Act, 1988, due to which it becomes disabled from questioning the quantum of compensation in the revisions and the appeals, though it has a right to question liability on the ground of infringement of specified terms and conditions of the insurance policy in the light of section 149(2) read with section 170 of the Act, 1988.

(7) In the case of **National Insurance Co. Ltd. v. Nicolletta Rohtagi and others**¹, their Lordships of the Supreme Court has held as under:

"(15) 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 the insurer in the statute which is neither found in the Act nor was intended to be included."

(8) Likewise, recently, in **Josphine James v. United India Insurance Co. Ltd.**², their Lordships of the Supreme Court has held as under:

"(17) The said order was reviewed by the High Court at the instance of the appellant in view of the aforesaid decision on the question of maintainability of the appeal of the insurance company. The High Court, in the review petition, has further reduced the compensation to Rs. 4,20,000 from Rs. 6,75,000 which was earlier awarded by it. This approach is contrary to the facts and law laid down by this court. The High Court, in reducing the quantum of

1 (2002) 7 SCC 456

2 2013 (10) Scale 340

compensation under the heading of loss of dependency of the appellant, was required to follow the decision rendered by three-Judge Bench of this court in Nicolletta Rohtagi's case, 2002 ACJ 1950 (SC) and earlier decisions wherein this court after interpreting section 170(b) of the M.V. Act, has rightly held that in the absence of permission obtained by the insurance company from the Tribunal to avail the defence of the insured, it is not permitted to contest the case on merits. The aforesaid legal principle is applicable to the fact situation in view of the three-Judge Bench decision referred to supra though the correctness of the aforesaid decision is referred to larger Bench. This important aspect of the matter has been overlooked by the High Court while passing the impugned judgment and the said approach is contrary to law laid down by this court."

(9) In the matter of **Shankarayya Vs. United India Insurance Co. Ltd.**³, their Lordships of the Supreme Court has held that unless procedure envisaged under Section 170 of the MV Act is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence.

(10) Similarly, in the matter of **Jagdish Prasad Pandey V. Darshan Singh**⁴, their Lordships of the Supreme Court has held that the insurer has no right to claim unless Claims Tribunal expressly records its satisfaction as to collusion or failure to contest mentioned in Section 170 of the MV Act, 1988.

(11) In a recent decision in **Rekha Jain v. National Insurance Co. Ltd.**⁵, their Lordships of the Supreme Court again held that 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 the Act, 1988 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 in absence of permission from the

3 (1998) 3 SCC 140

4 (2002) 9 SCC 527

5 2013 AIR SCW 4616

Claims Tribunal to avail the defence on behalf of the insured as required under section 170(b) of the Act, 1988.

(12) In view of aforesaid legal position, learned Claims Tribunal is absolutely justified in rejecting the application under Section 170 of the MV Act finding that no ground under Section 170 of the Motor Vehicles Act is established in which I do not find any illegality in the order impugned warranting interference by this Court in this petition.

(13) Accordingly, the writ petition fails and is hereby dismissed leaving the parties to bear their own cost (s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-