**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**APPELLATE CIVIL JURISDICTION**
**CIVIL APPLICATION NO.970 OF 2019**
**in**
**FIRST APPEAL NO.869 OF 2018**

Sarjerao Balu Nikam .. Applicant
v s
1. United India Insurance Company Limited
2. Kiran Popatlal Jain .. Respondents

Ms.Vijaylakshmi S.Nikam for Applicant
Mr.Rahul Mehta I.b KMC Legal Venture for Respondents.

***CORAM : K.K.TATED , J***
***DATE : 9th April, 2019***

P.C

Heard learned counsel for the parties.

2. By this Civil Application, the Applicant/original Claimant is seeking dismissal of First Appeal No.869 of 2018 on the ground that the same is not maintainable in-law. The Claimant is also claiming other reliefs in the present Civil Application. The applicant also prayed that the Applicant may be permitted to withdraw the entire awarded amount deposited by the Insurance Company.

3. Learned counsel for the applicant submits that in the present proceedings, the Insurance Company filed an application under section 170 of the Motor Vehicle Act,1988 on 14.1.2016 before the MACT, Mumbai. She submits that the said application was decided by the trial

Court without hearing them. She submits that the Tribunal has not given any reasons at the time of allowing the said application. Hence, the First Appeal as it is filed by the Insurance Company is required to be dismissed with costs.

4. The learned counsel for applicant in support of her contentions, relies on the Judgement of the Apex Court in ***NATIONAL INSURANCE CO. LTD VS NICOLLETTA ROHTAGI & ors 2002 ACJ 1950.*** She relies on para 14 and 31 of the said Judgement which reads thus :

> *"14. 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 judgment 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."*

> *31. 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, there 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 bonafide 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 res integra 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."*

5. It is to be noted that the Apex Court has specifically held in para 31 that if permission is granted and the Insurance Company is allowed to contest the claim on merits, in that case, it is open to the insurer to file an appeal against an award. Therefore the objection raised by the Advocate for the applicant in the present Civil Application is not sustainable.

6. Learned Advocate for the Applicant also relies on the Judgement of the Apex Court in ***SHANKARAYYA & anr vs UNITED INDIA INSURANCE CO. LTD & anr reported in 1998 AIR SCW 2819***. She relies on para 4 of the Judgement which reads thus :

*"4. It clearly shows that the Insurance company when impleaded as a party by the Court can be permitted to contest the proceeding on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed the Insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent no.1-Insurance Company on account of the contract of the Insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in section 170. Consequently, it must be held that on the facts of the present case, respondent no.1 Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."*

7. A bare reading of this authority shows that if permission is

not granted under section 170 of the Motor Vehicle Act, 1988 then, the Insurance Company cannot file any appeal against the award on merits of the claim only. That is not the matter in the case in hand. The Insurance Company filed an Application under section 170 of the Motor Vehicle Act, 1988 and the same was allowed by the Tribunal. Hence, it is not applicable.

8. By this Civil Application, the Applicant is also seeking permission to withdraw the amount deposited by the Insurance Company. It is to be noted that in the present proceedings, the Tribunal passed an award to the extent of Rs.13,94,500/- with interest whereas the Appeal filed by the Insurance Company is challenging Rs.4,80,003/- only. Therefore, the Applicant can withdraw a sum of Rs.9,14,497/- with accrued interest without furnishing any security to the Tribunal and for the remaining amount, liberty granted to the Applicant if so desired, to file another application for withdrawal of the balance amount and that will be decided on its own merits. Hence, the following order :

O R D E R

(A) Prayer clause (a) rejected.

(B) The Applicant/Original Claimant is permitted to withdraw Rs.9,14,497/- with accrued interest without furnishing any security from the Tribunal.

(C) The Registry of this Court is directed to transfer Rs.25,000/- deposited by the Insurance Company at the time of filing of the appeal with accrued interest if any to the Tribunal immediately.

(D) The Tribunal is directed to invest the remaining amount in Fixed Deposit initially for a period of one year and same be continued till further orders.

(E) Liberty is granted to the Applicant/Original Claimant if he so desires, to prefer an application for withdrawal of the remaining amount and that will be decided on its own merits.

Civil Application is disposed of accordingly.

**{K.K.TATED, J}**