raised by the counsel for the parties and having regard to the facts and circumstances of the case, awarded interim maintenance in the sum of Rs. 300 per month to each of the plaintiffs. I find no illegality or material irregularity in the impugned order so as to warrant interference in the matter of awarding interim maintenance. Now as far as the quantum of interim maintenance is concerned, though this aspect has not been seriously contested before me, yet in the facts and circumstances of this case as emerge from the impugned order, I am of the opinion that there is hardly any scope for pruning any sum awarded as interim maintenance to the plaintiff-respondents and the amount so awarded is quite just and fair.

(6) In view of the above, I find no merit in the revision petition and the same is consequently dismissed.

R.N.R.

Before N.K. Sodhi & N.K. Sud, JJ

NATIONAL INSURANCE COMPANY LTD. AND ANOTHER,—*Appellants*

versus

BALBIR KAUR AND OTHERS,—*Respondents*

F.A.O. No. 754 of 1999

27th March, 2000

Motor Vehicles Act, 1988—Ss. 149 (2) & 170—Tribunal accepting the claim of the claimants—An insurer can defend the action on any of the grounds mentioned in S. 149 (2) and cannot challenge the award on merits—Right to contest—Insurer may contest the claim on merits under section 170 before the Tribunal with its permission—Insurer failed to make prayer before the Tribunal to contest the claim on merits—It cannot challenge the award on merits under section 170 for the first time before the High Court—Appeal as well as application filed by the insurer challenging the award on merits not maintainable—Appeal dismissed with liberty to the company to challenge the award under Article 227 of the Constitution.

(The New India Assurance Co. Ltd. v. Randhir Singh and others, 1997(1) PLR 532, does not lay down correct law)

Held that, a reading of the provisions of sub Section (2) of Section 149 and S. 170 of the Motor Vehicles Act, 1988 would show that an

insurer is required to satisfy the judgment or the award of the Tribunal against the insured as if he were the judgment debtor in respect of the liability together with costs and interest payable provided the insurer had notice through the Court. It is further provided that an insurer to whom notice of any proceedings is given is entitled to be made a party thereto and can defend the action on any of the grounds mentioned in sub Section (2) of Section 149 of the Act and on no other. The grounds in this sub-section are very limited and the insurer is not entitled to challenge the award of the Tribunal on merits. There is, however, an exception to this general rule and that is contained in Section 170 of the Act. If the Tribunal during the course of the inquiry before it is satisfied that there is collusion between the claimants and the person against whom the claim is made or if the person against whom the claim is made fails to contest the claim then for reasons to be recorded the Tribunal may allow the insurer to be impleaded as a party and in that event the insurer so impleaded shall have the right to contest the claim on all or any of the grounds that are available to the insured against whom the claim had been made.

(Para 5)

Further held, that the Insurance Company did not plead collusion between the claimants and the insured and there is no order passed by the Tribunal allowing the insurance company to contest the claim on merits. As a matter of fact, the insurance company did not make any prayer to the Tribunal to allow it to contest the claim on all or any of the grounds available to the insured. Not having done so before the Tribunal, the insurer cannot be allowed to challenge the award on merits for the first time in appeal before this Court. The application filed by the appellant under section 170 of the Act seeking permission to contest the claim on merits itself is, thus, misconceived and not maintainable. We are, therefore, of the view that not only the application under section 170 of the Act but also the appeal filed by the appellant challenging the award on merits is not maintainable. It would be open to the company to approach this Court in the exercise of its supervisory jurisdiction under Article 227 of the Constitution.

(Paras 5, 8 & 12)

L.M. Suri, Senior Advocate with Deepak Suri, Sandeep Suri, Rohit Suri and Ms. Radhika Suri, Advocates,—*for the Appellants.*

R.M. Singh, Advocate for respondents 1 to 6.

JUDGMENT

N.K. Sodhi, J

(1) This order will dispose of a bunch of 17 FAOs No. 754, 944, 2091, 2732, 2733, 3285, 3425 to 3431, 3714 of 1999, 186, 247 and 460 of 2000 in which common questions of law and fact arise. Since arguments were addressed in FAO 754 of 1999, the facts are being taken from this case.

(2) On 14th September, 1996 Ajaib Singh deceased was driving scooter No. PB-11G-6304 and Darshan Singh deceased was sitting on the pillion seat. They were going from Devigarh to Village Behru. At about 9 P.M. when the scooter reached about one kilometer from Devigarh it was hit by truck No. HR-37-1340 which was being driven by Bhag Singh respondent. As a result of the accident, both Ajaib Singh and Darshan Singh received multiple injuries. Darshan Singh died at the spot whereas Ajaib Singh was removed to Rajindera Hospital, Patiala where he succumbed to his injuries. Ajaib Singh was about 42 years of age whereas Darshan Singh was 44 years old at the time of the accident. Smt. Balbir Kaur and others being legal heirs of Darshan Singh filed claim petition No. 180 of 1997 and Smt. Jaswinder Kaur and other heirs of Ajaib Singh filed claim petition No. 187 of 1997 before the Motor Accidents Claim Tribunal, Ambala claiming compensation on account of the death of Darshan Singh and Ajaib Singh, respectively. Both these petitions were clubbed together and evidence recorded in claim petition No. 180 of 1997. The truck was owned by Ram Niwas son of Bharat Lal and the same stood insured with the National Insurance Company Limited. Ram Niwas was impleaded as respondent No. 2 and insurance company as respondent No. 3 in the claim petitions. Bhag Singh driver was impleaded as respondent No.1. On receipt of notice from the Tribunal Ram Niwas onwer, Bhag Singh driver and the insurance company contested the claim and controverted the allegations made in the claim petitions. Bhag Singh produced his driving licence which is Exhibit R-2 From the pleadings of the parties, the Tribunal framed the following issues :--

(1) Whether the accident took place due to rash and negligent driving of truck No. HR-37-1340 by Bhag Singh respondent no. 1 resulting into death of Darshan Singh and Ajaib Singh as alleged ? OPP

(2) If issue No. 1 is proved, to what amount, if any, the claimants are entitled to and from whom ? OPP

(3) Whether the driver of the offending vehicle was not possessing any valid driving licence on the date of accident ? if so, its effect. OPR3

(4) Relief.

(3) On a consideration of the oral and documentary evidence produced by the parties, the Tribunal found that the accident took place due to rash and negligent driving of the truck by Bhag Singh respondent resulting in the death of Ajaib Singh and Darshan Singh. Issue No. 1 was thus decided in favour of the claimants and against the owner, driver and the insurer of the truck. As regards the quantum of compensation, Smt. Balbir Kaur and others were awarded a sum of Rs. 7,04,000 as compensation on account of the death of Darshan Singh and another sum of Rs. 5,42,000 was awarded to Smt. Jaswinder Kaur and others being heirs of Ajaib Singh deceased. It may be mentioned that at no stage of the proceedings before the Tribunal did the insurance company plead that there was collusion between the claimants and the insured nor is there any order passed by the Tribunal allowing the insurance company the right to contest the claim on all or any of the grounds that are available to the insured. It is against this award that the insurance company has filed the present appeal. Along with the memorandum of appeal the appellants have filed an application under Section 151 of the Code of Civil Procedure read with Section 170 of the Motor Vehicles Act, 1988. (hereinafter called the Act) seeking permission of this court to prosecute the appeal on merits and in the name of the insured. The prayer made in the application is that the appellant be allowed to challenge the award on merits which pleas were available only to the insured. A reading of the grounds of appeal would show that the insurance company has challenged the award on the ground that the Tribunal erred in law in awarding a sum of Rs. 7.04,000 as compensation on account of the death of Darshan Singh which amount, according to the appellant, is highly excessive. Similarly, it is alleged that the sum of Rs. 5,42,000 awarded to the heirs. of Ajaib Singh is also excessive. Another ground of appeal taken by the insurance company is that the driver of the offending vehicle was not negligent in causing the accident and that the finding of the Tribunal to the effect is erroneous.

(4) The question that arises for our consideration is whether the insurance company can be allowed to contest the claim of the claimants for the first time in appeal on grounds that are available to the insured/ owners of the offending vehicle without having contested the claim on those gounds before the Tribunal. In other words, can the insurance company be allowed to contest the award on the quantum of

compensation or on the gound that the driver of the offending vehicle was not negligent in causing the accident when it did not contest the claim before the Tribunal on those grounds. Before we answer this question it is necessary to refer to the provisions of sub-section (2) of Section 149 and Section 170 of the Act which read as under :--

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

1. ----------

2. No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment 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 judgment 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 contract of insurance a vehicle not covered by a permit of ply for hire or reward, or

(b) for organised racing a speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle; or

(d) 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 licenced, 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 or war, civil war, riot or civil commotion; or

(b) that the policy is void on the gound 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) to (7)._ _ _ _ _ _ _ _ _

"170. Impleading insurer in certain cases.—

Where is 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 gounds that are available to the person against whom the claim has been made."

(5) A reading of the aforesaid provisions would show that an insurer is required to satisfy the judgment or the award of the Tribunal against the insured as if he were the judgment debtor in respect of the liability together with costs and interest payable provided the insurer had notice through the court. It is further provided that an insurer to whom notice of any proceedings is given in entitled to be made a party thereto and can defend the action on any of the gounds mentioned in sub-section (2) of Section 149 of the Act and on no other. The grounds in this sub-section are very limited and the insurer is not entitled to challenge the award of the Tribunal on merits. In other words, it is not open to an insurance company to contend that the driver of the offending vehicle was not negligent in causing the accident nor can it raise a plea regarding the quantum of compensation to be awarded by the Tribunal. There is however an exception to this general rule and that is contained in Section 170 of the Act. If the Tribunal during the course of the inquiry before it is satisfied that there is collusion between the claimants and the person against whom the claim is made or if the person against whom the claim is made fails to contest the claim then for reasons to be recorded the Tribunal may allow the insurer to be impleaded as a party and in that event the insurer so impleaded shall

have the right to contest the claim on all or any of the grounds that are available to the insured against whom the claim had been made. If the insurance company does not plead before the Tribunal that there was any collusion between the claimants and the person against whom the claim was made and does not ask the Tribunal to pass an order under Section 170 of the Act allowing it to contest the claim on merits it will have no right to contest the same on the grounds other than those mentioned in sub-section (2) of Section 149 of the Act. In the case before us, the insurance company did not plead collusion between the claimants and the insured and there is no order passed by the Tribunal allowing the insurance company to contest the claim on merits. As a matter of fact, the insurance company did not make any prayer to the Tribunal to allow it to contest the claim on all or any of the grounds available to the insured. Not having done so before the Tribunal, we are of the view that the insurer cannot be allowed to challenge the award on merits for the first time in appeal before this Court. The application filed by the appellant under Section 170 of the Act seeking permission to contest the claim on merits itself is, thus, misconceived and not maintainable as such a plea could only be made before the Tribunal and not before this Court as is clear from the plain language of the Section. A similar question arose before the Supreme Court in *British India General Insurance Company Ltd.* v. *Captain Itbar Singh and others* (1). The learned Judges of the Apex Court were considering the provisions of Section 96 of the Motor Vehicles Act, 1939 and answered the question in the following words :—

> "To start with it is necessary to remember that apart from the statue an insurer has no right to be made a party to the action by the injured person against the insured causing the injury. Sub-section (2) of Section 96 however gives him the right to be made a party to the suit made to defend it. The right therefore is created by statute and its content necessarily depends on the provisions of the statute. The question then really is, what are the defences that sub-section (2) makes available to an insurer ? That clearly is a question of interpretation of the sub-section.
>
> Now the language of sub-section (2) seems to us to be perfectly plain and to admit of no doubt or confusion. It is that an insurer to whom the requisite notice of the action has been given "shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely", after which comes an enumeration of the grounds. It would follow that an insurer

(1) A.I.R. 1959 S.C. 1331

is entitled to defend on any of the grounds enumerated and no others. If it were not so, then of course no grounds need have been enumerated. When the grounds of defence have been specified, they cannot be added to. To do that would be adding words to the statute.

— — — — —

We therefore think that sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is not specified in it."

In *Shankarayya and another* vs. *United India Insurance Co. Ltd. and another* (2), the insurance company filed an appeal before the High Court against the award of the Motor Accident Claims Tribunal and got the quantum of compensation reduced when the insured had not filed an appeal and the insurance company had not moved the Tribunal under Section 170 of the Act for obtaining the right to contest the proceedings on merits. On appeal to the Supreme Court it was held that the insurance company was not entitled to file the appeal on merits of the claim which was awarded by the Tribunal. While considering the provisions of Section 149 (2) and 170 of the Act, their Lordship of the Supreme Court observed as under :—

"It clearly shows that the insurance company when impleaded as a party by the court can be permitted to contest the proceedings 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."

(6) A similar view has been taken by a recent Division Bench Judgment of the Madhya Pradesh High Court in *United India Insurance Co. Ltd.* vs. *Ramdas Patil* (3) and also by a Division Bench of the Kerala High Court in *United India Insurance Company Ltd.* vs. *K.N. Surenderan Nair and others* (4).

(7) Learned counsel for the appellant relied on a single Bench judgment of this Court in *The New India Assurance Co. Ltd.* v. *Randhir*

(2) 1998 A.C.J. 513
(3) A.I.R. 2000 M.P. 63
(4) A.I.R. 1990 Kerala 206

Singh and others (5) to support his contention that the insurance company could take over the defence of the insured for the first time before the appellate court and challenge the award on merits. No doubt, this judgment supports the plea of the appellant but in our opinion it does not lay down correct law. The learned single Judge while allowing the application of the insurance company under section 170 of the Act relied on the observations of the Supreme Court in British India General Insurance Company's case (supra) and a Division Bench judgment of this Court in *Unique Motor and General Insurance Co. Ltd.* vs. *Kartar Singh and another* (6). We have carefully gone through both these judgments and find that it has nowhere been laid down that an insurance company can for the first time in appeal take up the defences available to the insured.

(8) We are, therefore, of the view that not only the application filed by the appellant under section 170 of the Act but also the appeal filed by it challenging the award on merits is not maintainable.

(9) Faced with this situation, the learned counsel for the appellant then contended that the policy of insurance issued in favour of the insured contains a clause whereby it could take over the defence of the case and prosecute the same in the name of the insured for its own benefits any claim for indemnity or damages or otherwise and that by virtue of this right the insurance company is entitled to take over the defence of the right reserved by the insurance company in the policy of insurance it can take over the defence and challenge the impugned award on merits. The learned counsel in support of his contention referred to the judgment of the Supreme Court in British India General Insurance Company's case (supra) and in particular placed reliance on the following observations made in para 16 thereof :—

> "----------We are further more not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by policy, to defend the action in the name of the insured and if he does so all defences open to the insured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardship if any, by providing for a right to defend the action in the name of the insured and this he has full liberty to do----------. ------".

(10) Counsel for the claimants, on the other hand, argued that in view of the provisions of sub-section (2) of section 149 of the Act, the

(5) 1997 (1) P.L.R. 532
(6) 1964 P.L.R. 1083

insurance company has only limited grounds available to it which it can urge before the Tribunal and that the award cannot be challenged on grounds other than those mentioned in the section. The argument is that if the Legislature wanted such a right to be exercised by the insurance company then the same would have been made a ground for challenge under section 149(2) of the Act and that such a ground not having been provided therein the insurance company cannot take over the defence and challenge the award on merits. Reliance is placed on a Division Bench Judgment of the Kerala High Court in K.N. Surenderan Nair's case (supra).

(11) Without going into the question whether the insurance company can on the basis of the clause in the policy of insurance take over the defence of the claim on merits in the name of the insured dehors the provisions of sections 149 (2) and 170 of the Act, we are clearly of the opinion that even if it be assumed that such a right can be taken over, it has to be exercised before the Tribunal. A request has to be made to the Tribunal that the insurance company is taking over the defence and contesting the claim on merits. We are not inclined to accept the contention of Mr. Suri that merely because the insurance company was allowed to cross-examine some witnesses on merits of the claim, it should be inferred that the Tribunal had allowed it to take over the defence available to the insured. Before such defence can be allowed to be taken up, there has to be a specific order by the Tribunal to that effect recording reasons therein. Not having obtained an order from the Tribunal as envisaged under Section 170 of the Act, the insurance company cannot be allowed to take up the defences available to the insured for the first time in appeal before this court.

(12) It was lastly argued that it could happen that in a given case an insurance company if not given the right to challenge the award on merits or in regard to the quantum of compensation which may be highly excessive and unconscionable, a grave injustice may be done and the company will have no remedy. We are not impressed by this argument. In an appropriate case it would be open to the company to approach this court in the exercise of its supervisory jurisdiction under Article 227 of the Constitution.

(13) For the reasons recorded above, we find no merit in the appeals and dismiss the same leaving the parties to bear their own costs.

R.N.R.