CASE NO.:
Appeal (civil) 543 of 2002

PETITIONER:
UNITED INDIA INSURANCE CO. LTD.

RESPONDENT:
BHUSHAN SACHDEVA AND ORS.

DATE OF JUDGMENT: 18/01/2002

BENCH:
K.T. THOMAS & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2002 (1) SCR 352

The Judgment of the Court was delivered by THOMAS, J. Leave granted.

What is the remedy of the insurance company if it is aggrieved of the award passed by a Motor Accident Claims Tribunal (for short the Claims Tribunal). On the assumption that it cannot file an appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') the appellant-Insurance Company has chosen to file a revision petition before the High Court under Article 227 of the Constitution. A motion was made for stay of execution of the award during the pendency of the revision petition, but the High Court has only chosen to issue notice to the opposite parties to show cause why the revision petition cannot be entertained.

A claim was made before the Claims Tribunal, Patiala House, New Delhi, by the legal heirs of one Dr. Tulsi Dass Sachdeva for awarding compensation in respect of a motor accident which took place on 27.8.1994. Dr. Tulsi Dass Sachdeva died in the said accident and some of his kith and kin sustained serious injuries therein. The total amount claimed in the petition was Rs. 55.56 lakhs. The Claims Tribunal awarded Rs. 12.53 lakhs as compensation to be paid by the 5th respondent Dr. Ramesh Tandon and the appellant Insurance Company, jointly and severally.

The claimants averred in the application for compensation filed before the Claims Tribunal that a Maruti Van (No. HR-03-1300) in which the deceased and his wife and relatives were travelling had collided with a Maruti car (No. DL-4C-7741) which was driven by the 5th respondent in a very rash and negligent manner.

The 5th respondent Dr. Ramesh Tandon contended before the Claims Tribunal that the accident had happened on account of the rash and negligent driving of the Maruti van and therefore the driver of the Maruti car is to be totally absolved from the fault and hence the owner of the Maruti car has no liability to bear the compensation. Further again it was contended that the amount of compensation claimed in the application was highly excessive and grossly inflated. The Claims Tribunal repelled he contentions of the 5th respondent and passed the award directing the appellant-Insurance Company with whom the Maruti car was insured during the time of accident, to pay the entire compensation amount assessed.

The award of the Claims Tribunal was not challenged by the 5th respondent who is the insured-cum-owner of the Maruti car, evidently because he need not pay a single pie towards the awarded sum as the whole brunt of the burden was ordered to be borne by the insurer.

According to the appellant-Insurance Company the Tribunal's award was in gross violation of the principles of natural justice laid down by this Court in various judgments and is very unjust and arbitrary. However, as

appellant felt that an appeal could not be filed by the insurer in challenge of the award he had chosen to file the revision petition before the High Court.

In our view, the stand of the appellant that it cannot file an appeal at all before the High Court under Section 173 of the Act is based on an erroneous assumption. So long as the insured has not challenged the award passed against him and so long as the liability would only fall on the Insurance Company it is inequitable to deny a remedy of appeal to the Insurance Company. We will now see whether Section 173 contains any bar against filing such appeal by the Insurance Company. That section reads thus :

"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 expirty 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."

The hub of the section is that the right of appeal is conferred on "any person aggrieved by an award of a Claims Tribunal". When can an insurance company be aggrieved with the award passed by a Claims Tribunal to entitle it to invoke the right envisaged in Section 173 of the Act. The permissible contours of the involvement of the insurance company in the claims preferred before the Tribunals can be discerned from Section 168 of the Act. That section enjoins on the Claims Tribunal to hold an inquiry on receipt of an application for compensation. There is a statutory compulsion on the Tribunal that such inquiry could be conducted only "after giving notice to the application to the insurer" and to the parties and also only after giving an opportunity to the insurer as well as the parties of being heard. After holding such inquiry the Claims Tribunal has no jurisdiction to pass an award arbitrarily or as it likes, but only "an award determining the amount of compensation which appears to it to be just". The Tribunal shall specify in the award "the amount which shall be paid by the insurer or the owner or the driver of the vehicle involved in the accident or by all or any of them as the case may be." Can it be said that the Insurance Company should not have any grievance at all even in a case where the award appears to be unjust to that company? We must bear in mind that the nationalised insurance companies in India are holding public money. What they have to deal with is public fund. They are accountable to the public for every pie of it. If it is held that no insurance company should feel aggrieved even if the award is seemingly unjust and that such awarded amount should go out of the public fund it is public interest which suffers. If the insurance company has reason to believe that the award was obtained fraudulently which fact was not known to the insured, should we allow public money to be given to satisfy such an award? In such cases the insurance company must feel aggrieved. Any interpretation denying such aggrieved insurance companies the opportunity to seek the legal remedy of appeal should not be adopted unless there is a statutory compulsion. There is nothing in Section 173 or in the other relevant provisions of the Act which debars the insurance company to resort to the remedy of appeal when it knows that the award is unjust.

We are, therefore, of the view that the insurance company can fall within the ambit of the words "any person aggrieved by an award of a Claims Tribunal" as used in Section 173(1) of the Act, when the insured failed to file an appeal against the award.

Before the Claims Tribunal itself the insurer can be permitted to resist the claim even apart from the limited grounds enumerated in Section 149(2) of the Act under two eventualities. One is, when there is collusion between the claimant and the insured. Second is, when the insured failed to contest the claim. This has been incorporated in Section 170 of the Act which reads thus:

"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."

The person against whom the claim is made is normally the insured of the vehicle involved in the accident. When he failed to contest that claim made against him the insurer gets the opportunity to contest such claim on all or any of the grounds available to the insured. Such a provision was absent in the Motor Vehicles Act, 1939 initially and the Parliament inserted it therein only in March 1970. The right of the insured to contest a claim does not stop with the end of the proceedings before the Tribunal.

What is meant by the words "failed to contest"? Those words must be interpreted in a realistic manner. Right to contest would include the right to contest by filing an appeal against the award of the Tribunal as well. Hence the insured can continue to contest the claim by filing an appeal as provided under Section 173 of the Act. If the insured fails to prefer an appeal that also would amount to failure to contest that claim effectively. Quite often the insured would lose the desire to contest the claim once he is told that he would not be mulcted with the liability as the same is siphoned off to the insurer. It means that insured had dropped out from contesting a claim midway. In such an eventuality the Act enables the insured to contest it on all grounds available to the insured.

In Narendra Kumar & Anr. v. Yarenissa & Ors., [1998] 9 SCC 202 a two-Judge Bench of this Court considered the maintainability of an appeal preferred jointly by the insured and the insurer under the provisions of the Motor Vehicles Act, 1939. It is held by the learned Judges that when the insured filed the appeal it is not open to the insurer to prefer an appeal on the grounds available to the insured. In Chinnama George & Ors. v. N.K. Raju & Ors., [2000] 4 SCC 130 a two-Judge bench considered the scope of appeal preferred by the insurance company under the present Act. That appeal was preferred at a time when the insured had also filed an appeal challenging the award. In that case also the situation was almost the same as in the former decision. Learned Judges, therefore, observed that the insurer by associating with the owner or the driver cannot be allowed to mock at the law. Thus, the aforecited two decisions involved a common situation when the appeal filed by the insurer was held to be not maintainable as the insured had preferred an appeal challenging the award. Hence the principles stated therein are distinguishable on the fact situation.

We, therefore, take the view that it is open to the insurance company to invoke the right under Section 173 of the Act as the insured had failed to

appeal against the award passed against him. That being the position, the revision petition filed by the appellant before the High Court should be treated as an appeal petition under Section 173 of the Act. Appellant can be allowed by the High Court to amend the petition to include grounds of appeal etc. It is open to the appellant to move an application before the High Court for that purpose. If any application is filed by the applicant before the High Court for stay of execution of the award the same has to be considered on the merits of it and appropriate orders thereon can be passed.

We dispose of this appeal with the above observations,