

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

MAC No. 1489 of 2016

United India Insurance Co. Ltd. **Versus** Smt. Nirmala Sharma & Ors.

24/11/2016	Shri GVK Rao, Advocate on behalf Shri Dashrath Gupta, Advocate for the appellant. Heard on admission. The instant MAC has been preferred within its limitation. It is admitted for consideration. Record of the concerned Tribunal be called for through usual and fax mode. Also heard on I.A.No.1/2016 for exemption from filing certified copy of the order passed under Section 170 of the Motor Vehicles Act, 1988 (in brevity the Act). Learned counsel for the appellant placed reliance on an order passed by the Hon'ble Apex Court dated 23-10-2013 in Civil Appeal No. 9427/2013 (Special Leave Petition (C) No. 22535/2009) - Bajaj Allianz General Insurance Company Ltd. -v- Kamla Sen and others, in which Hon'ble Apex Court quoted para 19 and 20 of the judgment in the matter of United Insurance Co. Ltd. -v- Shila Datta and others reported in (2011) 10 SCC 509 which are reproduced below :- “(19) Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the Tribunal Under Section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the	

grounds available Under Section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party.

20. When a statutory notice is issued Under Section 149(2) by the Tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can, however, be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal Under Section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim."

The Hon'ble Apex Court set aside the impugned judgment and order passed by the High Court whereby the High Court dismissed the appeal of the appellant on the ground that since it had failed to move an application under Section 170 of the Act hence it was not open to the appellant to challenge the award of the Motor Accident Claims Tribunal, Hoshangabad in Claim Case No. 21/2008 dated 28-7-2008 except on the grounds provided under Section 149 of the Act and with this upheld the quantum of compensation as awarded by the Tribunal.

As submitted in this behalf and after perusal of the case law cited, in the considered view of this Court, I.A. No. 1/2016 for exemption from filing certified copy of the order passed under Section 170 of the Act deserves to be

allowed.

Consequently, on the basis of the case law cited, I.A. No. 1/2016 is hereby allowed. The appellant is exempted from filing certified copy of the order passed under Section 170 of the Act.

The appellant is directed to pay PF within 7 days.

Let notice be issued to the respondents through usual and registered mode under Rule 167 and 172 of the High Court of Chhattisgarh Rules, 2007, returnable within 4 weeks along with the copy of instant MAC, I.A.No.2/2016 for staying the execution proceedings and the documents annexed.

List the matter for hearing on I.A.No.2/2016 after notice is served on the respondents and the record is received.

Sd/

(Chandra Bhushan Bajpai)

Judge