

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2064 OF 2000

NATIONAL INSURANCE CO.LTD.

Appellant (s)

VERSUS

MADHU & ORS

Respondent(s)

(With prayer for interim relief)

Date: 07/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. Vishnu Mehra, Adv.

Ms. Sakshi Mittal, Adv.

Mr. B.K.Satija,Adv.

For Respondent(s) Mr. Ashwani Garg, Adv.

Mr. Vijay Kumar, Adv.

Ms. Sangeeta Kumar,Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is allowed in terms of the signed order.

(Rajesh Dham)

Court Master

(Khushi Ram)

Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 2064 OF 2000

NATIONAL INSURANCE CO.LTD.

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O R D E R

This is an appeal brought up by the appellant-Insurance Company in peculiar

circumstances alleging fraud and claiming that fraud vitiates the award of the Motor Accident

Claims Tribunal ('the Tribunal', for short) and the impugned judgment of the High Court

which upheld the said award.

Respondents Nos. 1 to 5 are the wife and four children, and legal heirs of deceased

Padam Singh. On 02.12.1995 the said Padam Singh, along with some other persons, was

travelling in a jeep near Modi Nagar road when the said jeep met with an accident with a truck

bearing registration No. UP 12 B 2878 insured with the appellant-Insurance Company. As a

result of the said accident, the said Padam Singh succumbed to serious injuries sustained and

died. Respondents Nos. 1 to 5 filed claim petition before the Tribunal. Respondent No. 6 before

us, Smt. Sulochana Devi, is said to be the owner of the offending vehicle. The driver of the said

vehicle was not impleaded in the claim petition on the ground that he was said to have died even

before the claim petition was presented. The said claim petition was contested by the owner of

the vehicle, Smt. Sulochana Devi, and the appellant-Insurance Company. Smt. Sulochana Devi

had filed a written statement in which she had admitted the fact of the accident but denied that

it was caused due to negligence of her employee, namely, the driver of the vehicle. It was also

alleged in the written statement that the driver had already died. The appellant-Insurance

Company filed a written statement but they did not deny the fact that the vehicle involved in the

accident was insured with them and took the stand that the claim petition had been filed by the

claimants in collusion with other respondents to the petition. They raised certain technical

defences to the effect that the claim petition ought to fail for failure to implead the necessary

parties.

The Tribunal recorded evidence and made an award on 06.03.1998 by which an

amount of Rs. 9,40,000/- was awarded as compensation in favour of the present respondents

Nos. 1 to 5 as against the owner of the vehicle, holding her to be liable for payment of the said

compensation, and also against the appellant-Insurance Company for making payment under

the insurance policy.

It is the case of the appellant-Insurance Company that, while the papers with regard

to the claim were being processed sometime in April 1998, they came across certain

circumstances which excited their suspicion as to the genuineness of the claim and the award

made thereupon. They appointed a private investigator Lal International Security and Detective Services, to make a thorough investigation of the facts of the case. The said investigator made

his own investigations and submitted a report to the appellant-Insurance Company on

18.05.1998. He reported that Smt. Sulochana Devi, the owner of the vehicle, had denied having

filed a written statement or engaging any lawyer to appear for her before the Tribunal. He also

claimed that the vehicle No. UP 12 B 2878 was not a truck but a tanker, which used to ply from

Mathura Refinery to IDPL, Rishikesh carrying petroleum products. The investigator also

reported that, contrary to what had been stated, the driver of the offending vehicle Bhopal

Singh was found alive and he had recorded his statement denying that he ever drove the

offending vehicle or that he had been involved in any accident. The investigator also reported

that the concerned vehicle was being driven by one Chaman Lal on 30.11.1995 and between

01.12.1995 to 07.12.1995. The facts were also stated to have been corroborated from the Register

of incoming materials of IDPL, Rishikesh.

On 27th May, 1998, the appellant-Insurance Company made an application for review

of the award by putting on record all the facts, which had come to their notice during the

investigation. They also placed a copy of the investigator's Report on record. The Tribunal

rejected the review application, taking the view that these facts ought to have been disclosed

before the award was made and that it was not open to the appellant-Insurance Company to

rely on these facts after the award was made, since it would amount to sitting in appeal on its

own award. The appellants preferred First Appeal FAO 573/1998 in the High Court of

Allahabad challenging the award as well as the dismissal of the Review Application. By the

impugned judgment rendered in the First Appeal, the High Court has taken the view that fraud

and collusion would be a question of fact, which could not be gone into in an appeal when it was

not raised before the Tribunal. Feeling aggrieved thereby, the appellant-Insurance Company is

before us.

We have been taken through the record. We have heard the learned counsel on both

sides. All that we can say, at this stage, without expressing any final view with regard to the

allegation of fraud, is that there were definitely certain circumstances, which could have raised

genuine apprehensions and prompted the appellant-Insurance Company to file an application

for review of the award, particularly since the award was for a large amount of Rs. 9,40,000/-.

It is unfortunate that the Tribunal took an erroneous view of the legal position and rejected the

Review Application without going into the question as to whether there were factual

circumstances which could warrant entertaining the Review Application. We have been taken through the order of the Tribunal rejecting the Review Application and, throughout therein, the refrain seems to be that, as the appellant had not placed the relevant facts on record before the award was made, the appellant was not entitled to put forward the case for review.

A Review Application, by definition, can only be filed after the award is made. Only question that the Tribunal was required to consider was, whether the circumstances were such that the facts put forward in the Review Application were not really within the knowledge of the appellant-Insurance Company during the trial of the claim petition or that the facts were such which could not have been discovered by exercising due diligence by the appellant-Insurance Company. If this exercise had been made, the Tribunal could have either granted or refused the Review Application on its own merits. Instead of doing so, the Tribunal seems to have taken an erroneous view of the legal position and rejected the application on merits.

The learned counsel for the appellant-Insurance Company drew our attention to the judgment of this Court in United India Insurance Co. Ltd. vs. Rajendra Singh & Ors., [2000] 3 SCC 581, which involved somewhat similar facts. This Court observed therein:

"15. It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because the appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and

if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wrangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim." (p. 587)

Perhaps, the learned Tribunal did not have the benefit of the judgment on the date on which the Review Application was rejected. Whatever that be, we are satisfied that the appellant should be given an opportunity of having the Review Application decided on its own merits, since this Court has taken the view that such review is tenable. The High Court also seems to have fallen into the same error in summarily disposing of the First Appeal, despite the issue of wrongful rejection of the Review Application by the Tribunal being raised before it.

On an overall consideration, we are satisfied that both the impugned order of the High

Court and that of the Tribunal dismissing the Review Application need to be set aside and the

parties be relegated to the Tribunal for a hearing of the Review Application on merits in the

light of the judgment of this Court in United India Insurance Co. Ltd. vs. Rajendra Singh & Ors

(supra).

In the result, we set aside the impugned judgment of the High Court as well as the

judgment of the Tribunal dismissing the Review Application and remit the Misc. Case No. 16 of

1998 to the file of the Court of the VIIIth A.D.J. & S.J., Muzafar Nagar for hearing and

disposal in accordance with law laid down by this Court.

It is needless to say that the matter requires urgent attention in view of the long

pendency of the matter and that the respondents/claimants would have full opportunity of

meeting the Review Application on merits by raising whatever defences are open to them.

We make it clear that we have not gone into the merits of the claim of fraud alleged by

the appellant-Insurance Company and it will be open to the Tribunal to deal with the merits of

the case and draw its own conclusion in the matter.

The Appeal is accordingly allowed with no order as to costs.

.....J.

NA)

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(B.N. SRIKRISH

.....J.

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(LOKESHWAR SINGH PANTA)

NEW DELHI ;

MARCH 07, 2006.