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UNITED INDIA INSURANCE CO. LTD.

v.

SEKJERAO AND ORS.

NOVEMBER 14, 2007

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Motor Vehicles Act, 1988—ss. 140 and 173—Motor accident—Injury to persons travelling in Trolley attached to Tractor—Claim for compensation—Granted by Tribunal fixing the liability to pay, on the Insurance Company—Appeal of Insurance Company u/s 173—During pendency thereof, execution proceedings—Writ Petition by insurance Company dismissed—On appeal, held: The issues regarding maintainability of appeal u/s 173 and regarding liability of insurance Company to pay compensation in such case, covered by judgments of Supreme Court—Matter remitted to decide the case in accordance therewith.

Persons traveling in a Trolley attached to a Tractor, suffered injuries in a motor accident. They claimed compensation. Tribunal passed the award rejecting the plea of the Insurance Company that it was not liable to pay compensation in such case, as it was the liability of the owner of the Tractor. While appeal of Insurance Company was pending before High Court, execution proceedings were initiated. Therefore the Company filed a Writ Petition, but the same was dismissed. Hence the present appeals.

Disposing of the appeals and remitting them to High Court, the Court

HELD: The issues regarding maintainability of the appeal in terms of Section 173 of Motor Vehicles Act, 1988 and regarding liability of Insurance Company to pay compensation to the labourers travelling in trollies, since have been decided by this Court, appeals are remitted to High Court to consider the matters in the light of

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those judgments. [Paras 6 and 8] [1152-C, D; 1153-E, F]

Smt. Yellowwa and Ors. v. National Insurance Co. Ltd. and Anr., (2007) 8 SCALE 77 and Oriental Insurance Company Ltd. v. Brij Mohan and Ors., (2007) 7 SCALE 753, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5201 of 2007.

From the final Judgment and Order dated 20.4.2004 of the High Court of Judicature of Bombay, Aurangabad Bench at Aurangabad in Writ Petition No. 4187 of 2003.

WITH

C.A. Nos. 5202-5205, 5207 & 5208 of 2007.

Sudhir Kumar Gupta for the Appellant.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in these appeals is to the order passed by a learned Single Judge of the Bombay High Court, Aurangabad Bench dismissing the writ petitions filed by the appellant (described hereinafter as 'the Insurance Company'). The controversy lies within a very narrow compass.

3. The respondents were travelling in the Trolley attached to a Tractor as labourers. They claimed to have suffered injuries because the Tractor with the Trolley in each case met with an accident. Petitions claiming compensation under the Motor Vehicles Act, 1988 (in short 'the Act') were filed along with application under Section 140 of the Act. Order was passed by the learned Additional District Judge and Ex-officio Member, Motor Accident Claims Tribunal, Latur (in short 'the MACT') on the principle of no fault liability. The Insurance Company took the stand that it had no liability in respect of the persons travelling in the Trolley and the owner of the Tractor is liable to pay compensation. This plea was rejected by the MACT. Appeal in terms of Section 173 of the Act in each case was preferred before the High Court. Learned Single Judge, *prima-facie*, was of the view that the appeal was not maintainable. Nevertheless, he referred the matter to the Division Bench, which, it

A appears referred it to a Full Bench. While the matter was pending consideration by the Full Bench, execution proceedings were filed. Therefore, writ petitions were filed before the High Court. The High Court, by the impugned order in each case, dismissed the writ petitions holding that though arguable questions were involved, the writ petitions did not deserve consideration.

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C 4. In support of the appeals, learned counsel for the appellant-Insurance Company submitted that the appeals in terms of Section 173 of the Act were maintainable and in any event, the Insurance Company has no liability in respect of the persons travelling in trollies attached to the Tractors.

5. There is no appearance on behalf of the respondents when the matter was called.

D 6. So far as the question of maintainability aspect is concerned, the issue is concluded by a judgment of this Court in *Smt. Yallwwa & Ors. v. National Insurance Co. Ltd. and Anr.*, (2007) 8 SCALE 77.

7. In paragraphs 16 to 19 of the judgment, it was observed as follows:

E “16. The question which is required to be considered is what would be the meaning of the term ‘award’ when such a contention is raised. Although in a given situation having regard to the liability of the owner of the vehicle, a claim Tribunal need not go into the question as to whether the owner of the vehicle in question was at fault or not, but determination of the liability of the insurance company, in our opinion, stands on a different footing. When a statutory liability has been imposed upon the owner, in our opinion, the same cannot extend the liability of an insurer to indemnify the owner, although in terms of the insurance policy or under the Act, it would not be liable therefor.

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H 17. In a given case, the statutory liability of an insurance company, therefore, either may be nil or a sum lower than the amount specified under Section 140 of the Act. Thus, when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which

event, it goes without saying, it would be open to the insurance company to plead and prove that it is not liable at all. A

18. Furthermore, it is not in dispute that there can be more than one award particularly when a sum paid may have to be adjusted from the final award. Keeping in view the provisions of Section 168 of the Act, there cannot be any doubt whatsoever that an award for enforcing the right under Section 140 of the Act is also required to be passed under Section 168 only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. A Claims Tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been substantiated, which is the basis for making an award. B C

19. Furthermore, evidently, the amount directed to be paid even in terms of Chapter-X of the Act must as of necessity, in the event of non-compliance of directions has to be recovered in terms of Section 174 of the Act. There is no other provision in the Act which takes care of such a situation. We, therefore, are of the opinion that even when objections are raised by the insurance company in regard to its liability, the Tribunal is required to render a decision upon the issue, which would attain finality and, thus, the same would be an award within the meaning of Section 173 of the Act." D E

8. So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in *Oriental Insurance Company Ltd. v. Brij Mohan and Ors.*, (2007) 7 SCALE 753 and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated by this Court in *Smt. Yallwwa's* case (supra) and *Brij Mohan's* case (supra). F G

9. The appeals are accordingly disposed of with no order as to costs.