

ORIENTAL INSURANCE CO. LTD.

V.

KALAWATI DEVI & ORS.

Civil Appeal No. 1824 of 2009

MARCH 24, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]

Motor Vehicles Act, 1988 – ss.166 and 170 – High Court dismissed appeal of insurer on erroneous factual premises – Also dismissed application for review – On appeal, held: Since factual aspects were overlooked by the High Court, direction given to it, to hear the matter afresh – Appeal – Manner of disposal.

In proceedings arising out of an application filed under s.166 of the Motor Vehicles Act, 1988, the High Court dismissed the appeal of insurer on the ground that it did not obtain leave to contest as required under s.170 of the Act once the owner of the offending vehicle did not take interest after filing written statement.

An application was filed before the High Court contending that the conclusion that the insurer had not obtained leave to contest was factually incorrect as leave to contest the claim was in fact granted by the MACT. The High Court rejected the application for review primarily on the ground that the scope of review was very limited under Order 47 Rule 1 of CPC and this was not a case of the nature where action in terms of Order 47 Rule 1, CPC could be taken.

In the instant appeal, the appellant submitted that since the High Court at the first instance proceeded on erroneous factual premises, it should have recalled the earlier order and heard the matter afresh.

A **Allowing the appeal, the Court**

B HELD: 1. The leave to contest the claim was granted to the insurer on 25.4.2001. Those aspects appear to have been overlooked by the High Court when the original order dated 14.11.2003 was passed. That being so, the impugned orders dated 14.11.2003 and dated 5.7.2006 in Civil Review stand quashed. Since the matter is pending since long, the High Court is requested to dispose of the matter as early as practicable. [Para 5] [1051-D-F]

C **CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1824 of 2009**

D From the Judgement and Order dated 14.11.2003 in M.A. No. 184 of 2002 and Final Order and Judgement dated 05.07.2006 in Civil Review No. 37 of 2004 of the Division Bench of Hon'ble High Court of Jharkhand at Ranchi.

Meenakshi Midha, Joy Basu, B.K. Satija, for the Appellant.

Susmita Lal, Apurb Lal, Ashesh Lal, Rachna Lal, for the Respondents.

E The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

F 2. Challenge in this Appeal is to the order passed by a Division Bench of the Jharkhand High Court in M.A. No.184 of 2002 dismissing the appeal filed by the appellant (hereinafter referred to as the 'insurer'). The High Court dismissed the appeal primarily on the ground that in the proceedings under Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') when the owner of the vehicle did not take interest after filing written statement, the insurer could have obtained leave to contest as required under Section 170 of the Act and establish that the Sheikh Akhtar, who was the driver responsible for the accident in question, had no valid licence. But no such leave to contest

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was obtained. Accordingly, appeal was dismissed. An application was filed before the High Court contending that the conclusion that the insurer had not obtained leave to contest was not factually correct. In fact the leave to contest the claim was granted by the MACT on 25.4.2001. The High Court rejected the application for review primarily on the ground that the scope of review was very limited under Order 47 Rule 1 of the Code of Civil Procedure, 1908 (in short the 'CPC') and this was not a case of the nature where action in terms of Order 47 Rule 1, CPC could be taken.

3. Learned counsel for the appellant submitted that since the High Court at the first instance proceeded on erroneous factual premises, it should have recalled the earlier order and heard the matter afresh.

4. Respondents supported the orders of the High Court.

5. Undisputedly the leave to contest the claim was granted to the insurer on 25.4.2001. Those aspects appear to have been overlooked by the High Court when the original order dated 14.11.2003 was passed. That being so, we set aside the impugned orders dated 14.11.2003 in MA No.184 of 2002 and dated 5.7.2006 in Civil Review No.37 of 2004 stand quashed. Since the matter is pending since long we request the High Court to dispose of the matter as early as practicable, preferably within two months from the date of receipt of this order.

6. The Appeal is allowed.

B.B.B.

Appeal allowed.