
(2007) 07 MP CK 0011
In the Madhya Pradesh High Court

Girdharial

APPELLANT

Vs

Chhaganlal and Others

RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Citation : (2008) ACJ 1716

Hon'ble Judges : S. Samvatsar, J

Bench : Single Bench

Judgement

S. Samvatsar, J.—This appeal is filed by the owner of the vehicle challenging the award dated 7.1.2000 passed by the Additional Member Judge, Motor Accidents Claims Tribunal, Vidisha in Claim Case No. 38 of 1997 whereby a sum of Rs. 79,500 is awarded by the claimants for the death of a 12-year boy Sanjay with interest at the rate of 12 per cent per annum. The Claims Tribunal has further directed that if the amount is not deposited within one month, then the defendants will have to pay interest at the rate of 18 per cent per annum. Motor Accidents Claims Tribunal has also found that as the vehicle in question was driven in violation of the terms of insurance policy the insurance company is not liable.

2. Contention of the learned Counsel for the appellant is that in a case for violation of terms of insurance policy, the Tribunal should have directed the insurance company to first pay the amount of compensation and should have granted right of recovery to the insurance company.

3. Mr. M.P. Agrawal, counsel for the insurance company, respondent No. 4, has no objection for this purpose. He relied upon a Division Bench decision of this court in the case of Durgesh Kumar Yadav Vs. Vimal and Others, , wherein this court has held that in case of third party, the insurance company should be first directed to deposit the amount of award and given a right of recovery to the insurance company.

4. Counsel for the insurance company, respondent No. 4, has supported the

award and submitted that in this case as there is a breach of conditions of the insurance policy, the insurance company cannot be made liable for payment of compensation and it is for the owner of the vehicle to pay compensation to the claimants.

5. In the present case, I find that there is an admission on behalf of the insurance company that the vehicle was insured with the present insurance company. Their case is that even if there is an insurance and they are liable to indemnify the owner of the vehicle, this is a case where the owner has violated the terms of the policy. In such circumstances, the insurance company cannot escape its initial liability to pay the award to the claimant who is a third party. It is always open for the insurance company, in such cases, to pay the amount to the claimants and then recover the same from the owner of the vehicle.

6. In the present case, I find that the owner of the vehicle has deposited 50 per cent of the amount of award. Hence, now remaining 50 per cent shall be deposited by the insurance company and the insurance company shall be free to recover the said amount from the owner of the vehicle.

7. As regards contention of the appellant that 18 per cent interest in default of payment of the amount under award within one month is concerned, the Apex Court in the case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, , has laid down that such condition is penal in nature and cannot be enforced. In such circumstances, in the light of the aforesaid judgment of the Apex Court, condition of paying 18 per cent interest in default is set aside and it is directed that the claimants shall be entitled to interest at the rate of 12 per cent per annum from the date of accident till realisation.

Thus, this appeal stands allowed in part. It is directed that 50 per cent balance amount shall be first paid by the insurance company to the claimants and then the insurance company shall have a right to recover the said amount from the owner of the vehicle.