
(2008) 04 AHC CK 0051
In the Allahabad High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Smt. Ramwati and Others		RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 149, 170

Citation : (2008) 4 AWC 3372

Hon'ble Judges : Shishir Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This appeal is arising out of an order dated 14.1.2008, passed by the concerned Motor Accident Claims Tribunal. Bareilly, fixing the liability of payment of compensation of Rs. 1.89.500 alongwith the interest upon the owner to be paid to the claimants on account of death of the deceased but as a stop gap arrangement the direction was given upon the insurance company to pay the amount of compensation and recover such amount from the owner.

2. No application u/s 170 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") was allowed. By preferring this appeal, the appellant contended before this Court that since the case is arising out of breach of policy, the statutory requirement to make an application u/s 170 of the Act is not required. In other words, the case is covered u/s 149(2) of the Act. He has further contended before this Court that since it has been proved beyond doubt under issue Nos. 5 and 6 that the driver and/or owner run the vehicle in contravention of the policy, insurance company is not liable to pay the compensation at all to the claimants.

3. Factually, the offending tractor was insured only to run by the driver but the labourers were also there on the tractor trolley who expired in such accident.

4. Learned Counsel appearing for the appellant has cited a Judgment in Oriental

Insurance Company Ltd. v. Brij Mohan and Ors. 2007 (3) TAC 20 (SC) : 2007 (3) AWC 2471 (SC), which according to the appellant arose in the similar circumstances. But we find, even applying extraordinary Jurisdiction under Article 142 of the Constitution the Supreme Court was pleased to direct the insurance company to pay the amount of compensation and realise the same from the owner of the tractor without initiating any separate proceeding for recovery of such amount.

5. According to us, there is a thinner line in between the words "no insurance policy" and "in contravention of insurance policy". Before making any argument on that score one has to understand whether his case is falling in the category of "no insurance policy" or "in contravention of insurance policy" because when there is no insurance, there is no scope of the insurance company to recover any sum from the owner. No agreement is existable for realisation of such amount. But in case of contravention of Insurance policy, the owner is liable to pay to the Insurance company the amount which it has released for the benefit of the claimants. This is pith and substance of the law of insurance. That apart, in a case of beneficial legislation equitable principle is tilted towards the beneficiary, which cannot be ignored. In a case of beneficial legislation, i.e., Motor Vehicles Act, 1988, beneficiary is the claimant. Therefore, under no circumstances he should be deprived of the benefit which is the logical conclusion of the different High Courts as well as the Supreme Court. Be it under the order itself or be it applying Article 142 of the Constitution, the principle cannot be different from one Court to other. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , it has been held by three Judges' Bench that a beneficial statute, as is well known, must receive a liberal interpretation. In such Judgment the question of non-availability of driving licence was under consideration to which various principles have been laid down exhaustively under the heading of summary of findings and it has been categorically held that the compensation will be paid by the insurance company to the claimants and recover from the owner for whom he has indemnified. It is to be clarified hereunder that such dispute is to be resolved between themselves but not at the cost of death or injury of a third party, who has suffered by such accident, and in the garb of litigation the payment of compensation should not be delayed or defeated. If it is allowed to be done, the principle of the insurance will evaporate. Hence, we cannot allow to do so.

6. This is the case, as we have understood, where the vehicle owner run the vehicle in contravention of the insurance policy. The owner is available for the purpose of payment unlike the case where no insurance agreement is available. Therefore, we do not find any cogent reason to interfere with the order impugned whereunder the Tribunal directed the insurance company to pay the amount and recover it from the owner. Therefore, we cannot admit the appeal. Hence, the appeal is dismissed without imposing any cost.

Incidentally, the appellant-insurance company prayed that the statutory deposit

of Rs. 25,000 made before this Court for preferring the appeal be remitted back to the concerned Motor Accident Claims Tribunal as expeditiously as possible in order to adjust it with the amount of compensation to be paid to the claimants, however, such prayer is allowed.

Shishir Kumar, J.

7. I agree.