

(2011) 05 AHC CK 0371

In the Allahabad High Court

Case No : First Appeal From Order No. 1063 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Zakia Khatoon

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 05 AHC CK 0371

Hon'ble Judges : S.C. Chaurasia, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard the learned Counsel for the parties and perused the record.
2. The present appeal u/s 173 of the Motor Vehicle Act, has been preferred against the impugned award dated 14.7.2008 passed by the Additional District Judge, Court No. 1, Lucknow in Claim Petition No. 169 of 2006.
3. While assailing the impugned award, the solitary argument advanced by learned Counsel for the Appellant is that the accident was caused by Bus No. U.P.-44/J-1605 which was under the contract of Uttar Pradesh State Road Transport Corporation (in short referred as "UPSRTC"), therefore, UPSRTC is liable to pay compensation. It has further been submitted that the UPSRTC is party in the present appeal as well as was arrayed as party in the original trial before the Tribunal.
4. Appellant's Counsel relied upon the judgment of Division Bench of this Court reported in F.A.F.O. No. 904 of 2006: The National Insurance Co. Ltd., through its Regional Manager. v. Smt. Laxmi Aggarwal and Ors. decided by judgment and order dated 18.9.2009 in which it has also been held that in case vehicle is attached with UPSRTC, then the UPSRTC shall be liable to pay compensation. The operative portion of the said judgment is reproduced as under:

For the reasons stated above all the appeals are allowed. The order of the Tribunals are set aside. We hold that UPSRTC are liable for payment of compensation and not the Appellant Insurance Cos. In case if the amount has already been deposited by the Insurance Co. the same shall be recovered from the UPSRTC. The Tribunal is directed to recover the balance amount, not already recovered, from the UPSRTC and release the same forthwith to the claimants as per their respective shares. The statutory amount deposited shall be remitted to the Tribunal. The Insurance Company may move an application for the refund of the amount. In case if any such application is moved, the same may be disposed of at the earliest. There shall be no order as to costs.

5. In view of the above, appeal is allowed. The impugned award is modified to the extent that U.P.S.R.T.C. shall be liable to pay compensation in terms of Tribunal's award.

6. Let U.P.S.R.T.C. deposit entire amount in terms of the award within a period of two months from the date of receipt of copy of this order before the Tribunal and the Tribunal shall release the amount in favour of the claimants in terms of the award immediately thereafter say, within a period of one month.

7. The amount already deposited by the Appellant before the Tribunal shall be refunded to the Appellant and the same shall be adjusted with the amount deposited by the UPSRTC.