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(2001) 07 UK CK 0004

In the Uttarakhand High Court

National Insurance Company Ltd. APPELLANT

Vs

Akhtar Sadiq RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Citation : (2003) 1 ACC 189

Hon'ble Judges : Mahesh Chand Jain, J

Bench : Single Bench

Judgement

M.C. Jain, J.—Heard Mr. Lalit Belwal, Counsel for the appellant Insurance Company.

2. The appeal is sought to be filed against an award dated 3.5.2001 passed by the Motor Accident Claims Tribunal awarding a sum of Rs. 1,26,000/- as compensation to the respondent Nos. 2 and 3 for the death of one Amit Singh in a motor accident. The accident was allegedly caused by the truck owned by the respondent No. 1. The contention of the appellant is that the driver of the vehicle did not possess a valid driving licence. Instead, the driving licence held by him was fake and fictitious one. Therefore, according to the submission of the learned Counsel for the appellant, there was breach of the condition of the insurance policy and liability to pay compensation could not be fastened on the Insurance Company. The controversy raised by the appellant is squarely covered by the decision of the Apex Court dated 27.3.2001 in Civil Appeal Nos. 2387/2001,2388/2001 and 2389/2001. It has been ruled that when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation or the policy conditions. But, the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

3. Accordingly, the Insurance Company was liable to pay to the dependents of the deceased despite the fact that the driving licence held by the driver,

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according to it, was fake. If the Insurance Company succeeds in establishing it, the Claims Tribunal would direct the insured to pay that amount to the insurer.

4. The case is remitted back to the Claims Tribunal for deciding the controversy raised by the Insurance Company. An opportunity shall be afforded to the parties concerned for adducing the evidence on the point as to whether the driving licence held by the driver was a valid one or fake. Thus the appellant and the respondent No. 1, the owner of the vehicle, shall be at liberty to adduce additional evidence before the Claims Tribunal.

5. However, it is made clear that the claimants, who are respondent Nos. 2 and 3, in this appeal need not appear during the remaining part of the proceedings in the Claims Tribunal.

6. The appeal is decided accordingly.

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