(2009) 05 AHC CK 0729

In the Allahabad High Court

Case No : First Appeal From Order No. 1600 of 2009

National Insurance Company Ltd. APPELLANT

Vs

Chhotey Lal and Others RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 168, 173

Citation : (2009) 05 AHC CK 0729

Hon'ble Judges : Amitava Lala, J and Devendra Kumar Arora, J

Final Decision : Allowed

Judgement

Amitava Lala, J.—The appeal has been preferred by the Insurance Company by saying that it has not been fastened with the liability but has been directed to pay the amount and recover the same from the owner of the vehicle for violation of terms and conditions between the owner and the insurer. Though the application under Section 170 of the Motor Vehicles Act, 1988 has been rejected by the Tribunal but the Insurance Company has preferred this appeal to say that he is not statutorily liable to pay the amount of compensation even by stopgap arrangement, in view of the judgment delivered by the Supreme Court reported in 2007 (2) TAC 8 (SC), New India Assurance Co. Ltd. v. Vedwati and others hence it has a right of appeal. Paragraph 14 of the judgment is recorded hereunder:

"The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."

2. According to us, if a vehicle is not insured it cannot be allowed to ply on the road by the Motor Vehicles Authority. But once an insurer entered into an agreement with an owner, it has to discharge the liability as, per the terms and conditions of the policy. There is only exception i.e. Section 149(2) of the Act. It is a provision on account of statutory violation by the owner or the driver.

Therefore, if any such violation springs out, liability shifts to the owner not on the insurer. On the other hand, scheme of beneficial peace of legislation i.e. the Act will be totally frustrated if interest of the claimant/s is/are not protected. TheAct being beneficial peace of legislation has been meant principally for the claimant/s sufferers, who are not at all party or parties to any agreement between the insurer and insured/ owner. The law is given a little indication as to how the interest of the claimants will be protected but on account of cancellation of policy etc. Therefore, the equity came forward to protect the interest of the claimants in the appropriate circumstances moulding the relief. Law Courts have adopted a principle that when the owner is not statutorily liable to pay compensation, the insurer will be directed to pay the same as agent of the owner as per terms and conditions of the contract. But when the owner is statutorily liable other than the contract, the insurer will be directed to pay compensation to the claimants and recover it from the owner so that interest of the claimants under any circumstances, suffer being beneficiary under the statute. Pay and recover is a stopgap arrangement. No question of making the insurer as liable. Had it been the case that though there is violation of Section 149 (2) of the Act by the owner or driver, yet the insurer has been fastened with the liability and at the same time application under Section 170 has been rejected, Court could have admit the appeal. This is not such a case. Thus, we pass the order normally we pass in such circumstances:

"This is an appeal of the insurance company. It is a case of death and awarded amount is Rs. 2,86,500/. However, we find that the insurance company, being appellant herein, has not been fastened with the liability to pay compensation but only as a stopgap arrangement has been directed to make payment with liberty to recover the same. Therefore, we do not find any cogent reason to interfere in the appeal, Hence, in view of the above, the appeal stands dismissed at this stage of admission upon being heard on informal papers, as agreed by the parties.

No order is passed as to costs."

3. Incidentally, the appellantinsurance company prayed that the statutory deposit of Rs. 25.000/ made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.

4. However, in case the owner and/or anyone has preferred any appeal or made any application before the appropriate Court/tribunal, the insurance company will not be debarred from contesting the same.

Hon''ble O.K. Arora, J.I agree.

