(2002) 11 AHC CK 0125

In the Allahabad High Court

National Insurance Company Ltd. APPELLANT

Vs

Smt. Rekha Devi and Others RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 170

Citation : (2003) 2 ACC 491

Hon'ble Judges : S.P. Srivastava, J;M.P. Singh, J

Bench : Division Bench

Judgement

S.P. Srivastava, J.

Heard the learned Counsel for the insurer/appellant.

1. The insurer-appellant feels aggrieved by the award of an amount of Rs. 1,52,000/- as compensation to the claimants 011 account of the untimely death of Saurabh, who was the only son of the claimants, aged about 8 years in the accident involving the offending motor vehicle which was insured by the appellant.

2. The learned Counsel for the insurer-appellant has strenuously urged that the amount of compensation awarded by the Tribunal is highly excessive.

3. In this connection, suffice it to say that there is nothing to indicate that the insurer-appellant had obtained the requisite permission envisaged u/s 170 of the Motor Vehicles Act and in that view of the matter, it can only raise the statutory defences available to it under the provisions of the aforesaid Act. Even otherwise, the Motor Accident Claims -Tribunal has taken into consideration the ratio of the decision of this Court in the case of United India Insurance Co. Ltd. v. Naukhey Lal Singh TAC 2002 (2) 657, while determining the amount of compensation at a figure of Rs. 1,52,000/-. The claimants had come up with the case that the deceased was a precocious child.

4. The learned Counsel for the appellant has tried to assail the findings of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/national-insurance-company-ltd-...

Tribunal returned against it but has not been able to demonstrate that the findings can be taken to be suffering from any such legal infirmity which may justify an interference therein. No justifiable ground has been made out for interference in the findings of the Tribunal determining the amount of Rs. 1,52,000/- as compensation. 5. It may further be noticed that as pointed out in the affidavit filed by the appellant the proceedings giving rise to the said award has been initiated u/s 163A of Motor Vehicles Act.

6. It has next been contended by the learned Counsel for the appellant that there was a breach of terms and conditions subject to which the insurance policy had been issued covering the risk. The contention is that the offending motor vehicle was being driven by a driver who had no valid licence.

7. Be what it may, so far as the statutory liability of the insurer-appellant contemplated under the provisions of the Motor Vehicles Act in the matter relating to the payment of just compensation determined by the Motor Accident Claims Tribunal is concerned, the mere fact that there was a breach of the terms and conditions subject to which the insurance policy had been issued cannot have the effect of exonerating the insurer of his statutory liability cast upon him in this regard to pay the amount to the third party.

8. In such a situation, it is always open to the insurer to get the amount paid in excess refunded to it from the owner/insured in an appropriate proceedings initiated before the Motor Accident Claims Tribunal in which proceedings such a dispute can be decided between the insurer and the insured after affording an opportunity of hearing to the insured in accordance with law.

9. It will, therefore, be open to the insurer-appellant to initiate an appropriate proceedings for the refund of the amount paid by it to the claimants and establish the breach of the terms and conditions subject to which the insurance policy had been issued.

10. The dismissal of this appeal will not come in the way of the insurer-appellant initiating such proceedings.

11. Taking into consideration the totality of the circumstances as brought on record, this appeal is totally devoid of merits, which deserves to be and is hereby dismissed in limine.

As prayed, the amount of Rs. 25,000/- deposited in this Court by the insurer-appellant u/s 173 of the Motor Vehicles Act be remitted to the Motor Accident Claims Tribunal concerned so that it may be disbursed to the claimant.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/national-insurance-company-ltd-…