(2014) 02 GAU CK 0025

In the Gauhati High Court

Case No : MAC Appeal 34 of 2012

New India Assurance Co. Ltd. APPELLANT

Vs

Smt. Rina Kumal and Another RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Citation : (2014) 2 ACC 895 : (2015) ACJ 274 : (2014) 3 GLT 696

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : S. Dutta, Mr. M. Choudhury and Mr. D. Chakaraborty, for the Appellant; P. Hazarika, for the Respondent

Final Decision : Disposed Off

Judgement

K. Sreedhar Rao, J.—Heard Mr. S. Dutta, learned counsel, for the appellant, and Mr. P. Hazarika, learned counsel, for the respondent. In the present case, husband of the claimant-respondent died in a motor vehicle accident. The Tribunal has found that the negligence of the driver of the offending vehicle and the coverage of insurance is proved and, thus, directed the compensation awarded payable by the insurer. The insurer, being aggrieved by the said award, has filed this appeal.

2. It is the contention that the vehicle is a commercial vehicle and was being plied without permit. Therefore, the insurer is not liable to pay compensation.

3. The counsel for the appellant relied upon the decision of the Supreme Court in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, In Challa Bharathamma (supra), in para 12 and 13, the following observations are made:

12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-?-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2)

defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

4. The absence of permit or infraction of the permit conditions does not defeat the effect of the policy as against third party claim. In that view, the insurer has to pay compensation to the claimants with the right of recovery from the insured by making an execution petition before the Tribunal and the Tribunal, after hearing the insured, can pass necessary order(s) in accordance with law. The conditions stipulated in the cited case does not constitute ratio. The said conditions are stipulated because of the peculiar circumstances. If the insured is not available immediately within a short span of time and payment of compensation to the claimant is deferred inordinately, the claimant would be put to great hardship. Therefore, the insurer to deposit the compensation and the same be paid to the claimants. The insurer can pursue his remedy against the insured by filing execution petition and the same be disposed of in the manner indicated above. The appeal is accordingly disposed of.

