
(2005) 08 BOM CK 0017
In the Bombay High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Sunita Nandkishore Borkar

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2006) 3 ACC 462

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Judgement

S.T. Kharche, J.—Heard the learned Counsel for the parties.

2. The short question of law that arises in this appeal is whether the insurer even though not liable to pay compensation can be directed to satisfy the Award in favour of the claimants and then to recover the same from the owner of the vehicle involved in the accident in view of the decisions in (i) National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and (ii) National Insurance Company Ltd. v. Bommithi Subbhayamma and Ors. III (2005) ACC 423 : 2005 (2) TAC 1 (S.C.).

3. The aforesaid question has been considered by the Larger Bench of the Apex Court in the case of National Insurance Co. Ltd. v. Baljit Kaur, (supra) wherein it has been held in para 21 that:

The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that law was not clear so long as such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in New India Assurance Company Vs. Shri Satpal Singh and Others, . The said decision has been overruled only in New India Assurance Co. Ltd. Vs. Asha Rani and Others, . We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded

amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the 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. We have issued the aforementioned directions having regard to the scope and purport of Action 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.

4. In view of the aforesaid legal position reflected in the Larger Bench decision of the Supreme Court, it is clear that the insurer has to satisfy the award as per the provisions of Section 168 of the Motor Vehicles Act, 1988. The question involved in this appeal has not been considered by the Division Bench of the Supreme Court in the case of National Insurance Co. Ltd. v. Bommithi Subbhayamma and Ors. (*supra*) and, therefore, this latter decision has no bearing on the facts and circumstances of the present appeal.

5. In the result, this Court is of the considered opinion that no substantial question of law is involved in this appeal and the same is liable to be dismissed. The appeal stands dismissed.