(2019) 07 UK CK 0207

In the Uttarakhand High Court

Case No : Appeal From Order No.293 Of 2010

New India Assurance Company Ltd. — APPELLANT

Vs

Anwari & Ors — RESPONDENT

Date of Decision : 24-07-2019

Acts Referred:

Motor Motor Vehicles Act, 1988 — Section 147, 173

Citation : (2019) 07 UK CK 0207

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : T.A. Khan, Vinay Bhatt

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1. This appeal, under Section 173 of the Motor Vehicles Act, 1988, has been preferred by the appellant The New India Insurance Company Ltd. against the judgment and award dated 02.04.2010 passed in M.A.C.P. no.289 of 2008, whereby learned Tribunal has partly allowed the claim petition against the appellant Insurance Company Ltd. for a sum of ` 3,24,000/-along with interest @ 7 per cent per annum from the date of filing the claim petition till the date actual payment is made. However, the learned Tribunal has given recoverable rights to the appellant Insurance Company on the principle of 'pay and recover' and has granted liberty to the appellant to recover the amount from respondent no.4, the owner of the offending vehicle.

2. Despite service, none has appeared for respondent no.4, owner of the offending vehicle. Appeal was filed by the owner respondent no.4, but the same has also been dismissed in default by this Court. Thus, the findings recorded by the Tribunal against the respondent no.4, are hereby affirmed. Now the sole question which is left for determination of this Court is whether the tribunal has wrongly directed the appellant to first satisfy the award on the principle of 'pay

and recover'.

3. In Manuara Khatun and others vs. Rajesh Kr. Singh and others, 2017 (4) SCC 796, the Hon'ble Apex Court has observed as follows:

"15. This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

16. R.M. Lodha, J. (as His Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under:

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. vs. Saju P. Paul, SLP© No. 20127 of 2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao(supra)."

17. The facts of the case at hand are somewhat identical to the facts of the case

mentioned supra because here also we find that the deceased were found travelling as "gratuitous passengers" in the offending vehicle and it was for this reason, the insurance companies were exonerated. In Saju P. Paul's case (supra) also having held that the victim was "gratuitous passenger", this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.

22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No.3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

4. In view of the above proposition of law propounded by Hon'ble Supreme Court, this Court does not find any illegality or infirmity in the impugned Award passed by the Tribunal. There is no merit in the appeal. Same is accordingly dismissed.

5. Let the statutory amount along with the interest accrued on it, if any, be remitted to the Tribunal concerned.