**(2010) 07 AHC CK 0164**

**In the Allahabad High Court**

New India Assurance Company Ltd. — APPELLANT

Vs

Smt. Agar Kali and Another — RESPONDENT

**Date of Decision :** 19-07-2010

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 149, 170

**Citation :** (2011) ACJ 2498 : (2011) 3 AWC 2664

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

# Judgement

Rakesh Tiwari, J.—Heard counsel for the appellant and perused the record.

2. This first appeal from order has been filed by New India Assurance Company Ltd. (hereinafter referred to as the appellant company ), challenging the validity and correctness of the impugned judgment and award dated 25.3.2010 passed by Motor Accident Claims Tribunal/Additional District Judge, court No. 3, Etah in Motor Accident Claim Petition No. 402 of 1999, Smt. Agarkali v. New India Assurance Company Ltd. and another. The appellant has prayed for setting aside the impugned award dated 25.3.2010 on the ground that award is illegal, arbitrary and without any justification and as such is liable to be set aside.

3. It is submitted by the counsel for appellant that the tribunal has not considered facts and circumstances as well as the evidence on record while awarding Rs. 95000/- to the claimant and since the tribunal has arrived to the conclusion that at the time of accident on 27.8.1999 the driver of the vehicle did not have effective and valid driving licence which is in violation of Section 149 of the Motor Vehicles Act, hence the appellant cannot be made liable to pay compensation awarded by the tribunal.

4. It appears from record that claimant respondent met with an accident while she was going on to her village on 27.8.1999. The accident took place with Truck No. DLG 7595 coming from Maanpur. It was claimed that the aforesaid truck was

being driven negligently and in a rash manner by the driver.

5. The appellant company appears to have made an application u/s 170 of the Act which was allowed by the Tribunal vide order dated 4.3.2010 permitting the appellant company to contest the case as owner of the vehicle was not contesting it properly. The Tribunal by the impugned judgment and award dated 25.3.2010 has awarded a sum of Rs. 95000/- with 6 % simple interest against opposite party No. 2 in the claim petition i.e. Asian Road Carriers Company through its proprietor Surendra Mohan Chopra, R/o L-17, Kalka Ji, New Delhi - owner of the vehicle. The Tribunal directed the appellant company arrayed as opposite party No. 1 in the claim petition to pay the aforesaid amount with interest to the claimant on behalf of opposite party No. 2- owner of the truck and recover the same from him. Aggrieved by the aforesaid award, the appellant company has come up in this first appeal from order.

6. Contention of the counsel for appellant insurance company is that driver of the truck was not having a valid and effective licence on the date of accident as the same had expired and had not been renewed, hence it is not liable to pay any compensation to the claimant. According to the counsel for appellant, the driving licence was issued to the driver on 27.9.1995 which was valid and effective upto 26.7.1998. It was again renewed for the period 6.8.2000 to 15.8.2003 and as such was not effective on the date of accident i.e. 27.8.1999.

7. It is correct to say that driving licence of the driver was not effective on the date the accident took place. It is also an admitted fact that the truck in question had been insured by the appellant company which had received premium from the owner. The Tribunal has noted in its judgment that it is the responsibility of the appellant company to prove that it had taken all measures to ensure that terms and conditions of the policy are not violated and in case they are violated it will not be liable to pay any compensation. At this juncture, the relief granted by the Tribunal may be looked into. For ready reference, it is reproduced here as under:

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8. From perusal of the relief granted by the Tribunal, it is clear that the Tribunal has not held the appellant company liable for the payment of compensation. It

 

appears that the appellant company is aggrieved by the fact that Tribunal has directed it to pay compensation to the claimant and recover the same from the owner of the truck who had taken insurance policy from it.

9. In a similar case, in Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, the Apex Court considered this question in paragraph No. 4 and 5 of the judgment thus:

4. Respondent No. 1, however, preferred an appeal there against which was dismissed by an order dated 24.1.2005 stating:

We therefore while dismissing the aforesaid appeal give liberty to the appellant to initiate appropriate proceedings against the owner and driver of the vehicle for realization of the amount which is to be paid by the Insurance Company in terms of the award to the third party-claimant subject to establishing its case before the Tribunal.

We further provide that the amount which is in deposit before this Court as well as before the Tribunal shall be allowed to be withdrawn by the claimants/ respondents. The balance amount shall be deposited by the Insurance Company within two months from today before the Tribunal. On deposit so being made, the claimants/respondents shall be allowed to withdraw the same also without furnishing any security.

It will however be open to the Insurance Company to recover the amount in question from the insured. For the purpose of recovering the same from the insured owner of the vehicle, the insurer shall not be required to file a suit. 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 he owner and in favour of the insurer. It is further directed that before releasing the amount, the insured owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. This observation is in consonance with the view taken by the Apex Court in case of oriental Insurance Co. Ltd. v. Nanjappan and Ors. AIR 2004 SC 1600.

5. Respondent No. 1, however, filed an application for review of the said order inter alia on the premise that as on the date of the accident, admittedly the driver was not holding any valid licence in terms of the judgment of this Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, Relying on or on the basis of the decision of this Court in Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, the said application for review was dismissed.

10. Thus, it is clear from the judgment of the Apex Court aforesaid that view taken by the Tribunal in the present case for payment of compensation to the claimant by the insurance company on behalf of owner insured and recovery from him - the insured is in consonance with the law and is permissible.

11. This aspect can also be looked from another angle. A claimant may suffer

 

either bodily injury or might die in an accident with motor vehicle. The insurance company who had insured the vehicle has taken premium from the owner. If for some reason, the terms and conditions of the policy are violated, it is the insurance company which has cause of action against the owner for breach of the policy but the claimant who has received injury or has died, in that case his dependants would be entitled to the amount. If there is breach of terms and conditions of the policy, it is the owner who is liable to pay the compensation and in case there is no breach of policy or it is found that the insurance company is liable to pay, it is the insurance company which is liable to pay the compensation, but the claimant cannot be made to suffer and compensation if not paid, his miseries are prolonged merely because the insurance company chooses to challenge the award before the High Court on the ground that the Tribunal has directed it to pay compensation on behalf of the insured and further that it has permitted the insurer to recover the amount from the insured.

12. The Courts have been of the view all throughout in the history of litigation that justice is to be done to ensure that victim is not victimised further. The insurance company in cases where the Tribunal has directed it to pay the amount of compensation on behalf of the owner, cannot be said to be aggrieved party. If the compensation awarded is stayed at the behest of the insurance company which is in proxy litigation, it cannot be ruled out that owner of the vehicle would not come in appeal and claim parity for stay of award against him. In the considered opinion of this Court, insurance company does not suffer by the manner in which the order is couched as the Tribunal has permitted it to recover the amount from the owner which is in accordance with the decisions of the Apex Court in Ishwar Chandra and Others Vs. The Oriental Insurance Co. Ltd. and Others, referred to and followed in this judgment.

13. For the reasons stated above, the present first appeal from order filed by the appellant company is incompetent as it has no grievance or cause of action to file this appeal. The appeal is accordingly dismissed. The appellant company shall comply with the award and will pay the amount within a period of 15 days from today and shall be entitled to initiate proceedings for recovery from the owner before the executing court as if the dispute was between the insurer and the owner in terms of the aforesaid judgment in Ishwar Chandra case (supra).