

(2009) 05 AHC CK 0362
In the Allahabad High Court

Oriental Insurance Co Ltd

APPELLANT

Vs

Sureshwati Alias Smt.Suresh And Another

RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0362

Hon'ble Judges : Amitava Lala, J and Devendra Kumar Arora, J

Final Decision : Allowed

Judgement

Amitava Lala and D.K. Arora, JJ.

This is an appeal of the insurance company. It is a case of accident and awarded amount is Rs. 2,78,800/. However, we find that the insurance company, being appellant herein, has not been fastened with the liability to pay compensation but only as a stopgap arrangement has been directed to make payment with liberty to recover the same. However, learned Counsel appearing for the appellant wanted to establish his case by placing the judgment reported in 2005 (1) T.A.C. 4 (SC) (National Insurance Company Vs. Challa Bharathamma). In that case the insurer was left open with a discretion to decide whether it would take steps for recovery of the amount from the insured on account of payment of recovery. In the process, instead of filling any fresh suit, the insurance company can initiate any proceeding before the Tribunal itself to decide the issue of recovery and it has been observed that before releasing 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. In case of necessity vehicle can be attached. The Regional Transport Authority can be apprised for necessary steps. Disposal can be made of the securities for realisation of amount.

We are of the view that each case has an independent face value to adjudicate upon the cause. As a matter of course, such observation can not be applied principally. There is another aspect which does not find place in the referred judgment. The claimant/s is/are not the party to the agreement by or between the insurer and insured. Therefore, in a beneficial piece of legislation like Motor

Vehicles Act, 1988, claimant/s interest is to be protected at first but not on condition on account of a defaulter i.e. the owner. If it is allowed to continue then the objects and reasons of the Motor Vehicles Act, 1988 will be frustrated and as the Parliamentary law is superior, we can not deviate ourselves from the objects and reasons of such law. We have thoroughly discussed this issue, though on different factual aspect, in the judgment reported in 2009 (1) ADJ 541 (DB) (National Insurance Co. Ltd. Vs. Jitendra Kumar & another).

Therefore, we do not find any cogent reason to interfere in the impugned in the appeal. Hence, in view of the above, the appeal stands dismissed at this stage of admission upon being heard on informal papers, as agreed by the contesting parties.

No order is passed as to costs.

Incidentally, the appellant insurance company prayed that the statutory deposit of Rs. 25,000/ made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.

However, in case the owner prefers any appeal or make any application before the appropriate Court/tribunal, the insurance company will not be debarred from contesting the same.