(2011) 10 AHC CK 0097

In the Allahabad High Court

Case No : First Appeal From Order No. 3337 of 2011

Oriental Insurance CO.Ltd.through Regional Manager, Allahabad thrugh its Legal Cell	APPELLANT
Vs	
Rafique Ahmad and others	RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Citation : (2011) 10 AHC CK 0097

Hon'ble Judges : Pankaj Mithal, J

Final Decision : Disposed Of

Judgement

Pankaj Mithal, J.—Heard Sri Viqar Ahmed Ansari, learned counsel for the appellantOriental Insurance Company Limited.

2. The Motor Accident Claims Tribunal vide impugned award dated 16.7.2011 has awarded a sum of R. 31,224/ to the claimant respondent with 8% interest.

3. The submission of the learned counsel for the appellant is that the driver of the vehicle was not having a valid license and therefore the tribunal erred in directing the appellant to satisfy the award and to recover the amount from the owner.

4. In a case of motor accident the primary liability to make good the loss suffered is upon the driver of the offending vehicle and the owner is vicariously liable. On the vehicle being insured the insurer takes over the said liability subject to the conditions of the policy. however where there is violation of the conditions of the policy the liability shifts upon the owner.

5. It has to be remembered that the Motor Vehicles Act, 1988 is a beneficial piece of legislation which is meant to protect the interest of the sufferers/ claimants. Therefore, the law courts have evolved a principle that where the vehicle is insured and there is breach of policy, the liability to pay compensation may rest upon the owner but the insurer will pay the compensation in the first instance and recover it from the owner. This principle safeguards the interest of

the sufferers/claimants and at the same time saves the insurer from the liability by giving right to recover the compensation from the owner of the vehicle.

6. A Division Bench of this Court in National Insurance Company Limited Vs. Chotey Lal and others 2009 (7) ADJ (DB) while considering the condition imposed in the award of the Motor Accident Claims Tribunal directing the insurer to pay and recover the amount from the owner held it is an equitable principle and that such a direction is only a stop gap arrangement which does not ultimately makes the insurer liable for compensation. Thus, principle of pay and recover as a condition in the award was held to be valid in view of the beneficial scheme of the Act.

7. In view of the above, the appeal is misconceived and is dismissed.

