(2004) 02 SC CK 0047

In the Supreme Court Of India

Case No : Civil Appeal No. 7191 of 2002

Punam Devi and Another — APPELLANT

Vs

Divisional Manager, New India Assurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2004) 1 ACC 720 : (2004) ACJ 785 : AIR 2004 SC 1742 : (2004) AIRSCW 1308 : (2004) AIRSCW 3263 : (2004) 2 AWC 1518 Supp : (2004) 1 BLJR 787 : (2004) 4 CHN 9 Supp : (2004) 120 CompCas 131 : (2004) 2 CTC 79 : (2004) 2 JCR 95 : (2004) 3 JT 332 : (2004) 4 LW

Hon'ble Judges : V. N. Khare, C.J;S. H. Kapadia, J;S. B. Sinha, J

Bench : Full Bench

Advocate : Ranjan Kumar Jha, Ejaz Maqbool and Braj K. Mishra, for the Appellant; J.R. Midha, Niraj Singh and Pranab Kumar Mullick, for the Respondent

Final Decision : Allowed

Judgement

1. In a motor vehicle accident one Sanjiv Kumar Jha died at the spot. Consequently, the appellants filed their claims petition before the Motor Accidents Claims Tribunal, Bhagalpur. Before the Tribunal, the respondent-Insurance Company neither pleaded nor led any evidence that the driver of the truck did not have any licence. The Tribunal by an order dated 12.2.1999 gave an award for a sum of Rs. 3,91,500/-. Aggrieved, the respondent-Insurance Company preferred an appeal before the High Court. A learned Single Judge of the High Court dismissed the appeal on the ground that the same was not maintainable. Aggrieved, the respondent-Insurance Company further filed a letters patent appeal before the High Court. The Letters Patent Bench set aside the order of the learned Single and remitted the matter back upon framing issues for determination by the Single Judge. It is against the said judgment, the appellants are in appeal before us.

2. In National Insurance Co. Ltd. Chandigarh v. Nicolletta Rohagi and Ors., it was

held that the insurance company cannot challenge the quantum of compensation awarded by the Tribunal. The only ground open to insurer is contained in Section 149(2) of the Motor Vehicles Act. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , this Court has held that "mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to me insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at me relevant time". In the present case, the insurer has not led any evidence that the driver of the vehicle had no licence. The burden of proof that the driver had no licence was open to the insurer which it failed to discharge.

3. In that view of the matter, the Division Bench erred in allowing the letters patent appeal.

4. We, therefore, set aside the order and judgment of the Division Bench, The appeal is allowed. There shall be no order as to costs.

