(2014) 12 UK CK 0010

In the Uttarakhand High Court

Case No : Appeal from Order No. 387 of 2010

The New India Assurance Co. Ltd. APPELLANT

Vs

Bhuwan Chandra Sunal and Others RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:
Constitution of India, 1950 — Article 142

Citation : (2015) 3 UC 1641

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : P.C. Maulekhi, Advocates for the Appellant; B.S. Adhikari, Advocates for the Respondent

Judgement

Servesh Kumar Gupta, J.—Having heard the learned counsel for the insurance company as well as for the claimant/respondent No. 1, it transpires that the accident occurred on 22.3.2006, wherein claimant Bhuwan Chandra Sunal was the injured. The vehicle Truck (dumper) bearing No. RJ27-G-5821 was offending, so its owner and driver along with the insurance company were made party and petition No. 280/2006 was launched claiming compensation. Driver and owner never appeared before the Tribunal but the claimant himself produced the policy cover of the insurance whereunder the offending vehicle was sheltered. The Tribunal held the owner of Dumper liable to pay compensation to the tune of Rs. 1.53 lakh, but directed the insurance company to reimburse this amount to the claimant with a right to recover the same from the owner Harjinder Singh. This judgment has been assailed by way of filing the instant appeal before this Court. Learned counsel for the appellant has placed reliance upon the precedent of this Court in case of United India Insurance Company Ltd. Vs. Tara Devi and Others, '' wherein the judgment of Hon''ble Apex Court, in case of National Insurance Co. Ltd. Vs. Parvathneni and Another, '' was relied upon. This Court in case of Smt. Tara Devi (Supra) held as under:-

"that there is no law which empowers the Tribunal to direct the insurance company to pay compensation after holding that the insurance company is not liable to pay the amount, with liberty to the company to recover it from the owner of the vehicle. In the present case, owner himself had died in the accident. Apart from this, in some of the cases in which the Apex court has given similar directions relating to payment of compensation, it appears to have exercised its constitutional power under Article 142 of the Constitution of India. The Motor Accident Claims Tribunal has no such power to direct the insurance company to pay the amount, particularly, when it is found not liable to pay the amount under the policy. If the Tribunals start issuing such directions then insurance company would be made to pay amount of compensation not only in the cases where it is liable to pay under the policy, but also even if it is not liable to pay in terms of the policy. The Legislature in the Motor Vehicles Act, 1988, nowhere intends to make the insurance company liable to pay the compensation even in cases where it is not liable to pay under the policy. The burden of getting recovered the amount of compensation, cannot be put on a party by the Tribunal unless such orders can be passed under some law. That being so, this Court finds that the Tribunal has erred in law in directing the compensation to be paid by the appellant (United India Insurance Co. Ltd.)"

2. I also do agree with the view expressed by this Court in the above precedent (Supra), which too is in consonance with the view expressed by the Hon''ble Apex Court.

3. Thus, for the reasons as discussed above, this appeal is allowed to the extent that the insurance company shall not pay the awarded amount to the claimant, but the same shall be recoverable only from the owner, against whom, the liability has been fastened by the Tribunal. Appellant-insurance company will be entitled to get back the entire amount deposited by it. Statutory deposit made before this Court at the time of presentation of appeal be also remitted to the concerned Tribunal. It is made clear that the insurance company will also be free to recover the money which has been withdrawn by the claimant in compliance of the orders passed by this Court earlier.