
(2001) 08 RAJ CK 0001
In the Rajasthan High Court
Case No : Special Appeal No. 41 of 2000

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Gyan Devi and Others

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Citation : (2001) 3 RLW 1814 : (2002) 2 WLN 554

Hon'ble Judges : K.S. Rathore, J;AR. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, C.J.—Heard Mr. Tripurari Sharma, for the appellant, Mr. Sandeep Mathur, for respondents No. 1 to 8 and Shri K.N. Tiwari, for respondents No. 9 and 10.

2. In this case, due to rash and negligent driving of the vehicle in question, the husband of the first respondent, Smt. Gyan Devi died in the accident. The Motor Accident Claims Tribunal awarded a sum of Rs. 7,89,600/- as compensation together with the interest @ 12% from the date of filing of the petition till the date of payment. The award has been passed against the appellant-Insurance Company as well as the owner of the vehicle-respondent No. 9 herein. The owner has not preferred any appeal against the award of the Motor Accident Claims Tribunal and the appellant-Insurance Company alone has preferred the appeal.

3. While admitting the present appeal, a Division Bench of this Court granted stay on the recovery of the compensation amount from the Insurance Company, but reserved liberty to the claimants to recover the compensation from the owner of the vehicle.

4. The Supreme Court in an identical case, while considering the "third party risk", was of the opinion that the Insurance Company is liable to pay compensation to the third party irrespective of the fact that there has been any breach or violation of the policy conditions and that the Insurance Company can recover from the insured the amount so paid to the third party if as per the

policy conditions the insurer had no liability to pay such sum. This judgment is reported in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , New India Assurance Co. Ltd. v. Kamla and Ors., decided on 27.3.2001.

5. In the instant case, Mr. Suresh Kumar Agarwal husband of the first respondent-herein, was the occupant of the jeep, who died in the tragic accident. In the light of the judgment of the Supreme Court, referred above, the appellant Insurance Company cannot take shelter on the plea that there has been breach or violation of the policy conditions. We, therefore, reject the said contention and direct the appellant Insurance Company to immediately deposit the entire sum of compensation i.e. Rs. 7,89,600/- with interest and cost as awarded by the Tribunal, with the concerned Motor Accident Claims Tribunal, Baran (Raj.), within four weeks from today and the said Tribunal, on deposit of such amount by the appellant-Insurance Company, shall order payment of Rs. 2,00,000/- to the first respondent herein-Smt. Gyan Devi (widow of deceased Shri Suresh Kumar Agarwal) and Rs. 50,000/- to the respondent No. 5 Smt. Sushila, widow of Chhitarlal and mother of the deceased, out of the total compensation amount to be deposited by the appellant-Insurance Company and shall reinvest the entire balance amount of compensation in any of the Nationalised Banks to the credit of the Motor Accident Claims Tribunal, in respect of Claim Application No. 116/98, initially for a period of two years. The deposit shall be renewed from time to time, till the disposal of the present appeal.