(2012) 02 AHC CK 0064

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No''s. 34269 and 49098 of 2004

United India Insurance Co. Ltd. APPELLANT

Vs

Mohd. Ishaq and Others RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Citation : (2013) ACJ 1576 : (2012) 4 ADJ 498

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Saral Srivastava, for the Appellant; S.K. Chaubey, R.K.S. Chauhan, S.M. Khalid and Aqueel Khan, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble S.U. Khan, J.—Heard learned counsel for both the parties.

First writ petition has been filed by the Insurance Company and the second writ petition by the vehicle owners. Mohd. Ishaq and his wife Smt. Jahida Bano instituted Case No. 95/W.C.A. of 2002 against Aqeel Khan, Rasheed Khan and Jameel Khan sons of Tauqee Khan owners of the vehicle and United India Insurance Company the insurer of the vehicle before Workmen Compensation Commissioner/Assistant Labour Commissioner, Bareilly. It was stated in the claim petition that claimants'' son Mohd. Iqbal was driver on a truck belonging to opposite parties 1 to 3 (petitioners in the second writ petition) and in an accident of the truck he died on 18.5.2002. The Workmen Compensation Commissioner allowed the claim through order dated 31.3.2003 and directed the owners to pay Rs. 3,44,855/- to the claimants.

Through the said order Insurance Company was not made liable for the reason that even though it was admitted by it that the truck was insured with it however, the insurance was in the name of Tauqee Khan father of opposite parties 1 to 3 the owners of the truck. In-fact Tauqee Khan had died before the accident and it was for this reason that his sons became owners of the truck. The point was so obvious that opposite parties 1 to 3 in the claim petition did not specifically state that their father had died.

2. Thereafter opposite parties Nos. 1 to 3 petitioners in the second writ petition and owners of the truck filed review petition. The review petition was allowed by the Workmen Compensation Commissioner through order dated 29.5.2004 and it was directed that the awarded amount of Rs. 3.44 lacs and odd should be paid by the Insurance Company. It was further directed that the owners should pay penalty at the rate of Rs. 35,000/- per year for three years (total Rs. 1.05 lacs).

3. These writ petitions have been filed challenging the orders passed on the review petition. The argument of learned counsel for the Insurance Company-petitioner in the first writ petition is that Workmen Compensation Commissioner has got no power to review and the argument of learned counsel for the petitioners in the second writ petition is that review petition had been filed by them hence they could not be saddled with the liability to pay penalty as the claimants had not filed any review.

4. As far as writ petition of claimants is concerned it is to be allowed on the ground that in the initial order dated 31.3.2003 passed by the Workmen Compensation Commissioner penalty had not been imposed and claimants had not filed any review petition hence in the review petition of owners penalty could not be directed to be paid by them.

Second writ petition is accordingly allowed.

5. As far as writ petition filed by the Insurance Company is concerned, it is to be dismissed even if the argument its learned counsel that review petition was not maintainable is accepted. The original order dated 31.3.2003 exempting the Insurance Company was utterly without jurisdiction. Aqeel Khan and his two brothers could not become owner of the truck unless their father had died or had transferred the truck to them. In both the contingencies the benefit of insurance of the truck would have been available to Aqeel Khan and his brothers. Insurance of a vehicle is a benefit attached to the vehicle and not the owner and change of ownership of vehicle does not affect its insurance. New owner of a insured vehicle is fully entitled to the benefit of the insurance and he is not required to get it insured again if the period of insurance got done by the previous owner is continuing. It was categorically admitted by the Insurance Company that the truck had been got insured by Tauqee Khan father of Aqeel Khan and his brothers and at the time of accident insurance was continuing and had not expired. Accordingly, if writ petition filed by the Insurance Company is allowed on the ground that Workmen Compensation Commissioner has got no power to review, the result would be that his earlier order dated 31.3.2003 would revive which was without jurisdiction in so far as it exempted the Insurance Company from the liability. A writ Court can very well refuse to exercise the jurisdiction/ discretion to quash an order even if it is illegal if the result of quashing will be revival of another illegal order. The matter may be looked from another angle

also. Even though the initial order dated 31.3.2003 has not been challenged however, that order is before the Court. In case contention of the Insurance Company that Workmen Compensation Commissioner has no power to review is accepted then the initial order of 31.3.2003 itself may be quashed by the Court to the extent to which it absolved the Insurance Company from the liability to pay the compensation.

Accordingly, first writ petition is dismissed and second writ petition is allowed.

