

(2021) 12 UK CK 0156

In the Uttarakhand High Court

Case No : Appeal From Order No. 435 Of 2011

United India Insurance Company Ltd

APPELLANT

Vs

Digambar Singh S/o Late Pooran Singh And Others

RESPONDENT

Date of Decision : 13-12-2021

Acts Referred:

Citation : (2021) 12 UK CK 0156

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : Pankaj Purohit, Raman Kumar Shah

Final Decision : Partly Allowed

Judgement

S.K. Mishra, J

1. Heard Mr. Pankaj Purohit, learned counsel for the appellant and Mr. Raman Kumar Shah, learned counsel for the respondents.

2. The appellant insurance company, who was respondent no.2 before the Motor Accident Claims Tribunal, Pauri Garhwal in MACP No. 47 of 2009 has assailed the award passed by the Tribunal directing it to pay a sum of Rs. 3,12,000/- with 7 % interest to the claimants.

3. This appeal involves a limited question, i.e., whether on the face of violation of permit granted to the operator of the commercial vehicle, the insurance company should be made liable to pay the compensation. Learned counsel Mr. Pankaj Purohit appearing for the appellants submits that in this case, the vehicle involved was allowed to carry 7 passengers, but at the time of the accident it was carrying 15 passengers in the vehicle, hence the incident took place. He also put forth the grievance of the Insurance Company that in total 8 claim applications have been made and as far as the first 7 claim applications, the Insurance Company has already satisfied the awards. But, they are aggrieved by the award in this case is because of the fact that the Insurance Company has not

been given the right of recovery from the owner. In this case, he relies upon several judgments of the Hon'ble Supreme Court and, specially in the case of National Insurance Company Ltd. vs. Anjana Shyam and others, reported in (2007) 7 SCC 445. In the aforesaid case, the Hon'ble Supreme Court held that the insurance policy taken out for the number of the permitted persons can only determine the liability of the insurance company in respect of those passengers. In terms of the Section 149 of the Act, the duty of the Insurance Company is only to satisfy the insured in respect of the third party. Obviously, that is to say the third party is coverable and is covered. The Hon'ble Supreme Court further held that Section 149 of the Act could not be understood as compelling the Insurance Company to make payments of the amounts covered by the policy itself but even in respect of those who are not covered by the policy and who have been loaded in the vehicle against the terms of the permit and against the terms of the conditions of the registration of the vehicle and in terms of the violation of the statute.

4. Hon'ble Supreme Court has further held that it is true that the provision in Section 149 of the Act are indicated for the benefit of the third party with a view to ensure that they receive the fruits of the award obtained by them straight away with an element of certainty and not to make them to wait for a long recovery proceedings as against the owner of the vehicle. But from that, it could not be possible to take out the next step and find that the insurance company is bound to cover the liability not covered by the contract of insurance itself. However, the Hon'ble Supreme Court further went on to hold that in spite of the relevant provisions of the statute, the insurance policy still remains a contract between the owner and the insurers and the parties are governed by the terms of their contract. The insurance coverage only extend to the accident of the passengers permitted by the insured or permitted by the statute and actually covered by the contract. The insurance can be made liable only in respect the number of passengers from whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in accident in case of overcrowding. However, the Hon'ble Supreme Court has further that since there is no means of ascertaining who out of the overloaded passengers constituted the passengers covered by the insurance company has permitted to be carried by the permit itself. The practical and proper course to determine compensation payable would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and would be compelled to cover the higher of the various awards and would be compelled to deposit of the award deposited the amount awarded to the accident from the passengers covered by the insurance policy. As there is no means of ascertaining, it would be for the Tribunal therefore, to direct distribution was deposited by the insurance company proportionately and leave the claimants to recover the balance from the owner of the vehicle.

5. In that view of the matter, it is very clear that even the vehicle is overloaded and there is violation of conditions like the permit granted for operation of such

vehicle then also the Insurance Company has to pay the compensation to the claimant, but should have the right of the recovery from the owner of the vehicle.

6. In that view of the matter, the appeal is allowed in part. The finding of the Tribunal is confirmed however, the insurance company is hereby granted the right of recovery of the amount already deposited in the Tribunal, from the owner of the vehicle as per procedure established by law. It is born out from the record that the entire compensation amount minus the statutory amounts as already ordered to be deposited by this Court before the Tribunal. If such an amount has already been deposited, the same may be released in favour of the claimant forthwith on proper identification along with the statutory amount which the Registry shall remit along with the accrued interest to the Tribunal forthwith.

7. There shall be no order as to costs.

8. Urgent certified copy of this order be granted on proper application.