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SooperKanoon Citation : sooperkanoon.com/490060

Court : Allahabad

Decided On : May-05-2003

Reported in : 2004ACJ1459

Judge : S.P. Srivastava and ; K.N. Ojha, JJ.

Acts : Motor Vehicles Act, 1988 - Sections 149(2) and 149(5)

Appeal No. : F.A.F.O. No. 1172 of 2003

Appellant : indrawati Devi and ors.

Respondent : Samrendra Tiwari and ors.

Disposition : Appeal dismissed

Judgement :

S.P. Srivastava, J.

1. Heard the learned counsel for the insurer appellant.

The appellant has filed the present appeal under Section 173 of the Motor Vehicles Act feeling aggrieved by the award of an amount of Rs. 4,15,280 determined as just compensation to which the dependants of the deceased Satya Narain Sharma were found entitled to on account of his untimely death in an accident involving the offending motor vehicle, a jeep which was insured by the present appellant covering the risk.

2. The Motor Accidents Claims Tribunal vide the impugned judgment and award after carefully considering the evidence brought on record by the parties, had come to the conclusion that on the date of the death Satya Narain Sharma was aged about 39 years and was getting a salary of Rs. 3,394 per month. The accident in which Satya Narain Sharma had received the fatal injuries was caused on account of rash and negligent driving of the bus. The Tribunal had utilized the multiplier of 15 while calculating the amount of compensation. The annual dependency was taken to be Rs. 27,152 after excluding 1/3rd of the income which the deceased might have been spending upon himself.

3. It may be noticed that undisputedly the deceased has a large family which consisted of besides his wife and father, 5 children whose ages are ranged between 8 and 18 years.

4. Learned counsel for the appellants has tried to assail the findings returned by Motor Accidents Claims Tribunal against it but has not been able to demonstrate that the said findings can be taken to be suffering from any such legal infirmity which may justify an interference by this court. These findings are amply supported and warranted by the evidence and the material brought on record.

5. Learned counsel for the appellants has strenuously urged that there was breach of terms and conditions subject to which the insurance policy had been issued covering the risk. The contention is that the offending motor vehicle was being driven by a person who had no valid licence to drive the offending motor vehicle. In this connection it has also been urged that the licence issued in favour of the driver of the offending motor vehicle authorize him to drive light motor vehicle, private only and not a taxi.

6. So far as the statutory liability of the insurer appellant contemplated under the provisions of the Motor Vehicles Act in the matter relating to the payment of just compensation determined by the Motor Accidents Claims Tribunal is concerned, the mere fact that there was violation of the terms and conditions subject to which the insurance policy has been issued, cannot have the effect of exonerating the

insurer from the statutory liability cast upon him in this regard to pay the amount to the third party victim.

7. It may be noted that in its decision in the case of United India Insurance Co. Ltd. v. Lehru, 2003 ACJ 611 (SC), the Supreme Court had clearly observed that where the owner had satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) of the Motor Vehicles Act. Further it was indicated that the insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner-insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured.

8. It was further observed that in a case where without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance.

9. In this connection it may also be noticed that as clarified by this court in the case of National Insurance Co. Ltd. v. Asha Devi, 2004 ACJ 418 (Allahabad), the status of the insurer in law so far as the statutory liability sought to be fastened upon him under the Act is concerned, cannot be more than that of a guarantor and he acts as a security for the third party with respect to its realizing damages for the injuries suffered but a right to get any amount paid in excess refunded to it by the insured stands secured. The ultimate burden always remains cast or fastened on the insured-owner of the motor vehicle.

10. In such a situation, it is always open to insurer to get the amount paid in excess refunded to it from the owner-insured in an appropriate proceedings initiated before the Motor Accidents Claims Tribunal in which proceedings such a dispute can be decided between the insurer and insured after affording an opportunity of hearing to the insured in accordance with law.

11. It will, therefore, be open to insurer appellant to initiate appropriate proceeding for the refund of the amount paid by it to the claimants and establish the breach of the terms and conditions subject to which the insurance policy had been issued.

12. The dismissal of this appeal will not come in the way of the insurer appellant initiating such proceedings.

13. Now taking into consideration the totality of the facts and circumstances as brought on record, no justifiable ground has been made out for any interference by this court in the impugned award.

14. This appeal is totally devoid of merits, which deserves to be and is hereby dismissed in limine.

15. As prayed, amount of Rs. 25,000 deposited in this court by the insurer appellant under Section 173 of Motor Vehicles Act be remitted to the Motor Accidents Claims Tribunal concerned within one month from the date an application is filed by the appellant for the purpose so that it may be disbursed to the claimant.