

**Kunwar Singh Vs. Motor Accident Claim Tribunal/A.D. and S.J. and ors.**

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**Court :** Allahabad

**Decided On :** Oct-27-2005

**Reported in :** 2006(2)AWC1641

**Judge :** V.M. Sahai and ;B.A. Zaidi, JJ.

**Appeal No. :** C.M.W.P. No. 67713 of 2005

**Appellant :** Kunwar Singh

**Respondent :** Motor Accident Claim Tribunal/A.D. and S.J. and ors.

**Advocate for Def. :** None

**Advocate for Pet/Ap. :** Nigamendra Shukla, ;A.B. Saran and ;Parmatma Rat, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**V.M. Sahai and B.A. Zaidi, JJ.**

1. We have heard Sri Nigamendra Shukla learned Counsel for the petitioner and Sri A. B. Saran learned senior counsel assisted by Sri Parmatma Rai, advocate.

2. In Motor Accident Claim No. 779 of 2000, Kunwar Singh v. Mahavir Singh and Anr. the Tribunal made an award on 30.5.2005 partly allowing the claim petition to the tune of Rs. 1,04,500 alongwith 6% per annum interest from the date of filing of claim petition till the date of payment and New India Assurance Company was held liable to pay the amount, and Sri Kunwar Singh and Smt. Khema Devi were entitled to receive half of the amount awarded by the Tribunal. learned Counsel for the petitioner has informed that New India Assurance Company has deposited the entire amount before the Tribunal on 17.6.2005 and the award of the Tribunal has not been challenged by the insurance company. The petitioner applied before the Tribunal that amount awarded be released. On 27.7.2005 the Motor Accident Claims Tribunal has passed the impugned order to the effect that since New India Assurance Company has moved an application that till security is taken from the owner of the vehicle, the amount be not paid to the claimant, in view propounded by the Apex Court in case of National Insurance Co. Ltd. v. Challa Bharthamma and Ors. AIR 2004 SC 4882.

3. We have gone through the aforesaid decision of the Apex Court. The decision is confined to its own facts and has no binding effect, and cannot be regarded as conclusive on the point, as in the case before the Apex Court, the insurer was held not liable in law to pay the amount, but it was directed to satisfy the award. The Apex Court took the view that the owner of the offending vehicle shall furnish security for the entire amount before the amount was released and in case, the amount is found due from him and is paid by the insurance company, then he will repay the same to the insurance company. These are not the facts of this case. Here, the amount has been awarded against the insurance company and it has been found liable to pay the amount. While deciding issue No. 3, it has been observed by the Tribunal that since driving licence has not been produced by the owner of the vehicle, it would be open to the insurance company to recover this amount from the owner. But no such direction has been given in the operative part of the order passed by the Tribunal. Therefore, the Tribunal was not correct in refusing to release the amount in favour of the petitioner in absence of any security furnished by the owner. In these circumstances, the Tribunal is directed to release the amount to the claimant.

4. In the result, this writ petition succeeds and is allowed. The order dated 22.7.2005, passed by Motor Accident Claims Tribunal, Meerut, Annexure-5 to the writ petition, is quashed. The Tribunal is directed to release the amount to the parties as per the award dated 30.5.2005, passed in Motor Accident Claim No. 779 of 2000, Kunwar Singh v. Mahavir Singh and Anr. within two weeks from the date of production of a certified copy of this order before the Tribunal.

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