Somchandra Vs. Ramdas and ors.

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SooperKanoon Citation : sooperkanoon.com/513398

Court : Madhya Pradesh

Decided On : Oct-31-2006

Reported in : 2008ACJ651

Judge : S.K. Kulshrestha and ;S.K. Seth, JJ.

Appellant : Somchandra

Respondent : Ramdas and ors.

Judgement :

S.K. Kulshrestha and S.K. Seth, JJ.

1. By this application under Order 47, Rule 1 of the Civil Procedure Code the applicant seeks review of the order dated 6.4.2005 passed in M.A. No. 488 of 2002. It is not disputed between the parties that even though the insurance company had been exonerated on the ground that the driver of the vehicle did not have a valid and effective licence to drive the vehicle, the learned single Judge in his order has proceeded on the footing that the insurance company has also been made liable and proceeded to direct the respondents to pay compensation of Rs. 75,000 with interest at the rate of 6 per cent per annum from the date of filing of the claim application before the Tribunal till realisation.

2. Learned Counsel for the applicant contends that there is error apparent on record inasmuch as the insurance company was absolved of its obligation, the

learned single Judge had proceeded on the assumption that the award of the Tribunal directed even the insurance company to pay the amount along with other respondents, i.e., the driver and the owner.

3. It is submitted by the learned Counsel for the applicant that ground on which the insurance company was absolved was that the investigator of the company had made enquiry from the office of the Regional Transport Authority vide Exh. D2 and in response whereof the R.T.O. had made an endorsement on Exh. D2 itself that licence had not been issued by his office. It is not disputed that none was examined from the office of the R.T.O. to demonstrate that the licence with the number communicated to the R.T.O. had not been issued. Under these circumstances, we are of the view that the insurance company had not discharged its obligation for proving that the licence was fake and it amounted to breach of condition of the policy relieving the insurer from its obligation. However, since the insured and the driver were ex parte, the fact that the driver did not possess licence and that the insured had notice of that fact had not come on record.

4. In the peculiar facts and circumstances, as stated above, we are of the view that though the insurance company is liable along with the other respondents to pay the amount of compensation, it would be open to the insurance company to make an appropriate application to the Tribunal to recover the amount from the insured by proving that the insured committed breach of the conditions of the policy. We are also fortified in our view by the judgment of the Apex Court in Lal Chand v. Oriental Insurance Co. Ltd. : (2006)7SCC318 .

5. With the above modification in the order dated 6.4.2005 in M.A. No. 488 of 2002, this review application is disposed of with no order as to costs.