

Mamta Rani and ors. Vs. Vikram Singh and ors.

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Court : Delhi

Decided On : Jul-27-2001

Reported in : II(2001)ACC652; I(2002)ACC713; 2002ACJ713; 94(2001)DLT75

Judge : S.N. Kapoor, J.

Appeal No. : F.A.O. No. 194 of 1996

Appellant : Mamta Rani and ors.

Respondent : Vikram Singh and ors.

Advocate for Def. : Pankaj Seth, Adv.

Advocate for Pet/Ap. : Anil Aggarwal, Adv

Judgement :

S.N. Kapoor, J.

1. Heard.

2. In this case the only short point, which is required to be considered, is :

'Whether the Insurance Company, namely, respondent No. 3, is liable to pay the entire amount of compensation awarded by the learned Motor Accident Claims Tribunal (in short 'the MACT'), though beyond the liability of the Insurance Company?'

3. Learned Counsel of the appellants relies upon the judgment in Oriental Insurance Co.Ltd. v. Cheruvakkara Nafeessu Others, : 2000(8)SCALE412 . In that case after considering the case of National Insurance Co. Ltd. v. Jugal Kishore, I (1998) ACC 327 (SC)=1998 (2) SCR 910, the Supreme Court in paras 9 and 10 observed as under:

'9. The reliance of the learned Counsel for the appellant on New India Assurance Co. Ltd. v. Shanti Bai, : [1995]1SCR871 and National Insurance Co. Ltd. v. Jugal Kishore, I (1998) ACC 327 (SC) = 1998 ACJ 270 , is of no help to him inasmuch as in those cases the effect of judgments in Amrit Lal Sood's case : [1998]2SCR284 , has not been considered. In Shanti Bai's case the Court was dealing with the effect of a comprehensive policy vis-a-vis the liability of the insurer in respect of third party risk on the basis of the estimated value of the vehicle and found that the limit of liability with regard to third party risk does not become unlimited or higher than the statutory liability only on account of entering into a comprehensive policy. It was pointed out that the comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle which did not mean the limit of liability with regard to third party risk becoming unlimited or higher than the statutory liability. In the case of National Insurance Co. v. Jugal Kishore (supra) this Court observed that the liability under the policy could not exceed the statutory liability under Section 95 of the Act only on the ground that the insured had undertaken comprehensive insurance of the vehicle. The payment of higher premium on that score, however, did not mean that the ,limit of liability with regard to third party risk became unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the Act.

10. In the facts and circumstances of this case we find that despite holding the liability under the policy limited to the extent of Rs. 50,000/-, the Claims Tribunal and the High Court were not unjustified in directing the appellant company to pay the whole of the awarded amount to the claimants on the basis of the contractual obligations contained in clauses relating to the liability of the third parties and avoidance clause. However, the Claims Tribunal and the High Court were not justified in rejecting the right of the appellant company to recover from the insured

the excess amount paid in execution and discharge of the award of the Tribunal.'

(Emphasis supplied)

4. On the other hand, in support of his contention that the Insurance Company is not liable to pay beyond limited liability, learned Counsel for respondent No. 3/Insurance Company relies upon the judgment in National Insurance Co. Ltd. v. Jugal Kishore and Others (supra). It may be mentioned that the judgment in Jugal Kishore's case (supra) was specifically considered in Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu and Others (supra) but was not followed. Consequently, this Court is bound by the said subsequent judgment.

5. The learned Counsel for respondent No. 3/Insurance Company submits that the respondent/Insurance Company should not be made to pay interest for a period of five years, for it was acting upon the judgment of National Insurance Co. Ltd. v. Jugal Kishore (supra), while the judgment in Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu and Others (supra) has come only on 14.12.2000. I think I cannot accept this prayer in view of the observations made by the Supreme Court, for the awarded amount would include the amount of compensation as well as the interest thereon @ 12% per annum.

6. Learned Counsel for the respondent also has submitted that the appellant/claimants must file at least affidavit that they have not received any amount from the insured. Learned Counsel for the appellants has agreed with this submission.

7. For the foregoing reasons, the appellants are directed to file affidavits to the effect that claimants have not received any amount from the respondents other than respondent No. 3/Insurance Company - as is being submitted. On filing the affidavits, the respondents shall pay the whole of the awarded amount, including that amount with interest which was held to be payable by the insured in terms of the order of the learned Tribunal to the appellants/claimants within four weeks. However, the respondent No. 3/Insurance Company shall be entitled to recover from the insured the amount paid to the claimants in excess over and above the limited liability to the extent of Rs. 1,50,000/- and interest thereon.

8. The appeal stands disposed of accordingly.

9. Appeal disposed of.

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