

Court No. - 48

Case :- FIRST APPEAL FROM ORDER No. - 274 of 1999

Appellant :- The Oriental Insurance Co.

Respondent :- Smt. Sangeeta Devi And Others

Counsel for Appellant :- ,Amaresh Sinha

Counsel for Respondent :- Sheo Mani Yadav

Hon'ble Vipin Chandra Dixit,J.

Heard Sri Anubhav Sinha, Advocate holding brief of Sri Amaresh Sinha, learned counsel for the appellant and Sri Sheo Mani Yadav, learned counsel for the claimant-respondent no. 1 to 7. In spite of service, no one is present on behalf of respondent nos. 8 and 9, who are owner and driver of the offending jeep.

This first appeal from order has been filed on behalf of appellant-Insurance Company under Section 173 of Motor Vehicle Act, 1988 against the judgment and award dated 23.12.1998 passed by District Judge/Motor Accident Claims Tribunal, Mirzapur in M.A.C.P. No. 7 of 1993 (Sangeeta Devi and others vs. Iqramuddin and others), by which compensation of Rs.2,16,000/- alongwith 12% interest has been awarded to the claimant-respondent on account of death of Mahendra Giri who died in a road accident occurred on 16.1.1993.

The appeal has been filed mainly on the ground that insured jeep was plying in violation of terms and conditions of insurance policy as driver of jeep was not having valid and effective driving licence. Secondly, the offending jeep was insured under private car policy but was used as a taxi after taking fare from the passengers. One Shankar Giri was appeared before the Claims Tribunal as P.W.-2, who has stated on oath that he was travelling in the jeep bearing no. U.P.65-D/4590 at the time of accident after paying the fare to the driver. No evidence in rebuttal has been adduced by the owner of the jeep. From the evidence of P.W.-2, who was an eye witness and was travelling in offending Jeep, it is apparent that several passengers were travelling in Jeep after paying fare and it was used as taxi. The Claims Tribunal has erred in deciding issue nos. 3 and 4 against the appellant-insurance company holding that there was no breach of any terms and conditions of insurance policy. The findings recorded by the Claims Tribunal in this regard is perverse and against the evidence. The Claims Tribunal has also wrongly shifted the burden upon the insurance company to prove that driving licence was not valid. Learned counsel for the appellant-insurance company has placed reliance on the judgement of the Hon'ble Apex Court in the case of **Manuara Khatun & Ors. Vs. Rajesh Kumar Singh & Ors., reported in 2017 0 Supreme(SC) 176**. Relevant paragraph 16, 17 and 18 are reproduce as under:

"16. This question also fell for consideration recently in *Manager, National Insurance Company Limited v. Saju P. Paul & Anr.*, (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".

17. Justice R.M. Lodha (as His Lordship then was and later became CJI) Speaking for the Bench held in paras 20 and 26 as under:

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur*, (2004) 2 SCC 1 and *Challa Upendra Rao*, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (*National Insurance Co. Ltd. v. Saju P. Paul*, SLP No. 20127 of 2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in *Challa Upendra Rao*(supra)."

18. The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found travelling as "gratuitous passengers" in the offending vehicle and it was for this reason, the insurance companies were exonerated. In *Saju P. Paul's* case (supra) also having held that the victim was "gratuitous passenger", this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings."

Learned counsel appearing on behalf of claimants-respondents have not disputed the fact that at the time of accident several persons were travelling in the offending jeep after paying fare.

Inspite of service of notice the driver and owner of Jeep had not contested the appeal. From the evidence and materials, which are available on record it is apparent that the Jeep was insured as private vehicle but was used as Taxi carrying passengers after receiving fare. The finding recorded by the Claims Tribunal while deciding issue nos. 3 and 4 regarding breach of policy is perverse and against the evidence and materials which are available on record.

In view of the above discussion, the first appeal from order filed by appellant-insurance company is liable to be allowed.

The First Appeal From Order is partly allowed and judgment and award dated 23.12.1998 of the Claims Tribunal is modified to the extent that respondent no. 8 who is owner of the jeep is liable to pay the compensation. Interim order, if any, stands discharged.

The appellant-insurance company is directed to deposit the entire awarded amount including interest within two months from date, if has already been not deposited. It is open to the appellant-insurance company to recover the entire deposited amount from respondent no. 8 being the owner of the vehicle. The claimants are permitted to withdraw the entire deposited amount without furnishing any security.

Order Date :- 14.5.2025

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