

S.B. Civil Misc. Appeal No.815/2005

Oriental Insurance Co. Ltd.

vs.

Smt. Meera and others.

Date : 30.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Jagdish Vyas, for the appellant.

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Heard learned counsel for the appellant.

The appellant has challenged the impugned award dated 4.1.2005, the Motor Accident Claims Tribunal, Udaipur held that because of breach of conditions of policy by the insured, the appellant insurance company is not liable to reimburse the compensation amount to the insured. However, in view of the judgment of the Hon'ble Apex Court, the Tribunal directed the appellant to pay the award amount to the claimants and gave a right to the appellant company to recover the amount from the owner. However, after holding so, in the main award, this direction has not been incorporated in the operative part. The Tribunal also awarded interest at the rate of 6% p.a. and in default of payment of entire amount along with interest within three months, interest is to be levied at the rate of 9% per annum.

Learned counsel for the appellant submits that the

appellant since has not been held liable for compensation amount, therefore, the Tribunal has committed illegality in directing the appellant company to pay the award amount to the claimants and committed further illegality in enhancing the interest rate in case default is committed by the appellant in payment of compensation in stipulated time fixed by the tribunal in award. According to learned counsel for the appellant, this enhancement of rate of interest is not permissible as it is penal in character as held by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Keshav Bahadur and others reported in AIR 2004 SC 1581.

I have considered the submissions of learned counsel for the appellant.

So far as not recording in operative part of the award about the right of the appellant to recover the amount from the owner of vehicle is concerned, it is insignificant because the Tribunal very specifically while deciding the issue no.5 gave this right to the appellant company and, therefore, even in absence of specific direction in operative part, the appellant shall have right to recover the amount from the owner of the vehicle.

So far as initial liability to satisfy the award by making the amount is concerned, this Court, after considering the arguments of learned counsel for the appellant in an identical appeals being S.B. Civil Misc.

Appeal No.847/2005 (National Insurance Company Ltd. vs. Soma & Ors.) and five other appeals, held that even in cases where in fact, there is no liability of the insurance company to pay the award amount, still the insurance company is liable to satisfy the claim of the claimants and can recover the amount from the insured, therefore, I do not find any force in this submission of learned counsel for the appellant.

Next is the question of award of interest by the Tribunal. It is true that the Hon'ble Supreme Court in the case of Keshav Bahadur (supra) held that when the discretion has been given to the Tribunal to pass order for interest on award amount, then that discretion can be exercised once and asking to pay the enhanced interest in case of non-payment of interest by stipulated time, then that will amount to penalty and that is impermissible. In present case there exists reason for not interfering in the award. It is clear from the impugned award itself that the Tribunal awarded interest at the rate of 9% p.a. in case the amount of award is not paid or deposited within three months by non-claimants including appellant company. The Tribunal passed the order of payment of interest at the rate of 6% p.a. only without assigning any reason for awarding such a low interest. Enhancement of rate of interest in default is in fact the normal rate of interest which is awarded by the courts in claim cases. Therefore, when this point has been raised for the first time in the appeal, this Court in Soma's case (supra) and rejected the

contention of the appellant company and in this case, when the total interest is at the rate of 9% p.a. only, this Court feels no reason to interfere in the appellate jurisdiction.

Accordingly, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya