

## S.B.CIVIL MISC. APPEAL NO.10/2001

National Insurance Company Ltd.

vs.

Smt. Kusumlata Ashok and others.

DATE OF JUDGMENT :: 27.2.2006

PRESENTHON'BLE MR. PRAKASH TATIA, J.

Mr. S Johari a/w Ms.M Maheshwari, for the appellant.

Mr. KR Choudhary, for the respondents/claimants.

Mr. R Joshi, for the respondent no.6/driver.

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Though the matter is listed for orders on the stay petition but at the request of learned counsel for the parties, the appeal is heard finally in view of the fact that according to learned counsel for the appellant, the only point involved in the appeal is whether the Tribunal could have directed the appellant insurance company to pay the compensation amount despite the fact that the driver of the vehicle had no driving license and this finding has been recorded by the tribunal.

Learned counsel for the appellant submits that the driving license has not been produced nor the driver who was directed to appear before the Tribunal did appear, therefore, the tribunal held that the driver of the vehicle was not possessing the driving license of the vehicle. In

view of the above, the owner of the vehicle breached the condition of the policy, therefore, the appellant is not liable. The Tribunal also held that the insurance company is not liable for compensation. However, after interpreting Section 149(2) and after relying upon the judgment of the Kerala High Court reported in 1977 ACC 168 held that the initial liability to pay compensation to the claimants is of the insurer and the insurer shall recover the amount paid to the claimants from the insured.

It is submitted that when once the owner breached the conditions of policy and it has been held that the insurance company is not liable, then the insurance company cannot be directed to pay the compensation amount to the claimants.

Learned counsel for the claimants submitted that the claimants also preferred appeal to challenge the award and seeking enhancement of the award but in this appeal, the only point involved is about the initial liability to satisfy the award amount.

Learned counsel for the respondent no.6 submitted that the driver of the vehicle was having driving license and the conditions of the policy have not been breached by the owner of the vehicle.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

In this appeal, the insurance company had right to raise only the grounds which are available to them under the Act. In this appeal, the insurance company cannot have grievance against any of the findings recorded by the Tribunal in view of the fact that the findings are in favour of the insurance company about the driver having no driving license. Even the finding about ultimate liability is also in favour of the appellant.

Learned counsel for the appellant submits that the appellant could have challenged only the direction of the Tribunal in the award by which the insurance company was directed to satisfy the award amount by paying it to the claimants but this contention also now has no force in view of the various judgments of the Hon'ble Apex Court wherein the Hon'ble Apex Court held that the insurance company is still required to pay the compensation amount. However, the insurance company can recover the said amount from the owner of the vehicle.

In view of the above, without commenting on any other point whether the driver had driving license or not ? and whether the owner breached the condition or not ?, in this appeal, since the only point raised by the appellant is squarely covered by the decision of the Hon'ble Apex Court and followed by this Court, I do not find any merit in this appeal.

In view of the above, this appeal is hereby dismissed.

The stay order dated 8.1.2001 granted by this court is vacated and the stay petition is also dismissed.

(PRAKASH TATIA), J.  
S.Phophaliya