

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 502 OF 2013
WITH
CIVIL APPLICATION NO. 4634 OF 2008
IN
FIRST APPEAL NO. 502 OF 2013

THE NATIONAL INSURANCE
CO. LTD. .. APPELLANT

VERSUS

SANJAY GANPATI LOHAR & ANR... RESPONDENTS

Ms. Poonam Mital, Advocate for the appellant

CORAM:-A. P. BHANGALE, J.
DATED : 30/9/2013

P.C.

Heard.

2 According to learned advocate for the appellant, main insurance policy is not operative as cheque issued towards payment of premium was dishonoured and insurance policy could not come in operation. The insurer would not be liable to pay compensation to the claimant. However, it is

submitted that the amount of award is already deposited with the tribunal. That being so, considering the impugned judgment and award, the tribunal can execute the award provided that, if amount is allowed to be withdrawn by the claimants along with interest as ordered, the security to the satisfaction of the tribunal be insisted upon until insurer (appellant) can move the tribunal with the application to disown the liability to pay compensation, on the ground that policy was not subsisting on the date of the award or at the time of the accident.

3 Liberty, accordingly for the appellant to move the tribunal. However, in my opinion, when third party is a victim of motor vehicle accident, the contention that insurance policy was cancelled prior to the date of accident as a result of dishonour of cheque issued towards premium, would not be an excuse for not to pay the award amount. Of course considering the fact that insurance policy is a contract between the insurer

and the insured (policy holder) and third party is not concerned with the fact of payment of premium but concerned with compensation awarded, the victim of the accident (third party) is entitled to receive the amount awarded as compensation and insurer is surely liable to pay. The insurer is entitled to move the tribunal as against the owner of the offending vehicle to recover the amount, if according to it the amount was wrongly paid as compensation to the third party.

4 Ruling in National Insurance Co. Ltd. v. Reshmi & Ors., 2012 ACJ 920 and National Insurance Co. Ltd. v. Seema Malhotra & Ors., (2001) 3 SCC 151 and New India Assurance Co. Ltd. v. Rekha Devi & Ors., 2013 ACJ 1686

are brought to my notice. In view of the observations made, in my opinion, since the amount of award is already deposited with the tribunal, the victim of the accident, which is third party, is entitled to receive the same while the insurer can recover the amount, if compensation was paid wrongly to the

claimants and was recoverable from the owner of the offending motor vehicle. According to ruling, the insurer or owner of the motor vehicle is liable either jointly or severally to pay compensation to the third party i.e. the claimants (dependents of the victim of the accident). The order accordingly must be passed with liberty to the insurer to move the Tribunal in case it wants to recover compensation paid from owner of the offending Motor vehicle in the same proceedings of the execution of award and need not adopt any independent suit or proceedings to recover the run paid from owner of the offending Motor vehicle.

5 The appeal is disposed of accordingly.

(A.P. BHANGALE, J.)

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