

**(2011) 09 AHC CK 0376**

**Allahabad High Court (Lucknow Bench)**

**Case No:** First Appeal From Order No. 112 of 2010

New India Assurance Comp. Ltd.

APPELLANT

Vs

Smt. Maikin and Others

RESPONDENT

**Date of Decision:** Sept. 27, 2011

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 173

**Citation:** (2011) 10 ADJ 845

**Hon'ble Judges:** Satish Chandra, J; Devi Prasad Singh, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### **Judgement**

1. Heard Sri H.P.S. Chadha, learned counsel for the appellant and learned counsel for the respondents.
2. Present appeal u/s 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and award dated 19.9.2009 passed by the Motor Accident Claims Tribunal, Lucknow in Claim Petition No. 207 of 2007.
3. While assailing the impugned award, a solitary argument advanced by the learned counsel for the appellant is that the law settled by a Division Bench of this Court in the case reported in 2010 (1) A.L.J. 339, that the liability was fastened on U.P.S.R.T.C. to pay the compensation under the impugned award.
4. Learned counsel for the appellant has invited the attention to the order dated 18.9.2009 passed by a Division Bench of this Court in F.A.F.O. No. 199 of 2001 - United India Insurance Company Ltd. v. U.P.S.R.T.C. However, aforesaid judgment of the Division Bench has been overruled by the Hon'ble Supreme Court vide judgment and order dated 25.7.2011 passed in Civil Appeal No. 5901 of 2011 --U.P.S.R.T. C. v. Kulsum and others, 2011 LCD 1648. Their Lordships" of Hon'ble Supreme Court in the said judgment has held as under:

43. Perusal thereof would show that there has not been any violation of the aforesaid terms and conditions of the policy. Respondent-Insurance Company has also failed to point out violation of any Act, Rules or conditions of the Insurance. Insurance Company has no legal justification to deny the payment of compensation to the claimants.

44. In the light of the foregoing discussions, the Appeal filed by Insurance Company fails, wherein it has been directed that the amount would first be paid by the Company, with right to it to recover the same from owner of the vehicle. This we hold so, as the liability of the Insurance Company is exclusive and absolute.

45. Thus, looking to the matter from every angle, we are of the considered opinion that Insurance Company cannot escape its liability of payment of compensation to Third Parties or claimants. Admittedly, owner of the vehicle has not violated any of the terms and conditions of the policy or provisions of the Act. The owner had taken the insurance so as to meet such type of liability which may arise on account of use of the vehicle.

46. Apart from the above, learned counsel for Insurance Company could not point out any legal embargo which may give right to it to deny the payment of compensation. Thus, legally or otherwise liability has to be fastened on the Insurance Company only.

47. In the light of the aforesaid discussion, the Appeals of the Corporation are allowed. The impugned judgment and order passed by High Court qua the Corporation are hereby set aside and quashed and we hold that the Insurance Company would be liable to pay the amount of compensation to the claimants.

48. Appeals filed by the Corporation thus stand allowed and the Appeal filed by the Insurance Company stands dismissed with costs.

5. In view of the law settled by the Hon"ble Supreme Court, the appellant Insurance Company shall be liable to pay compensation in terms of impugned award. However, no other ground has been argued or pressed by the appellant's counsel.

6. In view of above, the appeal lacks merit. Accordingly, the appeal is dismissed.

7. Let the entire amount under the award be deposited by the appellant Insurance Company before the Tribunal within a period of two months from today and the Tribunal shall release the amount in favour of the claimant in terms of the award within a period of next one month. The amount already deposited in this Court shall be remitted to the Tribunal forthwith.