

(2002) 11 AHC CK 0150

Allahabad High Court

Case No: F.A.F.O. No. 2254 of 2002

National Insurance Co. Ltd.

APPELLANT

Vs

Pramod Kumar Srivastava and
Others

RESPONDENT

Date of Decision: Nov. 21, 2002

Acts Referred:

- Motor Vehicles Act, 1988 - Section 170, 173

Citation: (2003) ACJ 2125

Hon'ble Judges: S.P. Srivastava, J; M.P. Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.P. Srivastava and M.P. Singh, JJ.

Heard the learned Counsel for the insurer appellant. The insurer appellant feels aggrieved by the award of an amount of Rs. 1,50,000 as compensation to the claimants on account of the untimely death of their daughter Ranjana aged about 8 years in the accident involving the offending motor vehicle.

2. Learned counsel for the insurer appellant has urged that taking into consideration the age of the deceased, the amount of compensation, awarded by the Tribunal is excessive.

3. In this connection, suffice it to say that there is nothing to indicate that the insurer appellant had obtained the requisite permission envisaged u/s 170 of the Motor Vehicles Act and in that view of the matter, it can only raise the statutory defences available to it under the provisions of the aforesaid Act. Even otherwise, the Motor Accidents Claims Tribunal has taken into consideration the ratio of the decision of this Court in the case of [United India Insurance Co. Ltd. Vs. Nokhey Lal Singh and Another](#), while determining the amount of compensation a figure of Rs. 1,50,000. The claimants had come up with the case that the deceased was a precocious child.

4. The learned Counsel for the appellant has tried to assail the findings of the Tribunal returned against it but has not been able to demonstrate that these findings can be taken to be suffering from any such legal infirmity which may justify an interference therein.
5. It has next been contended by the learned Counsel for the appellant that there was a breach of terms and conditions subject to which the insurance policy had been issued covering the risk. The contention is that the offending motor vehicle was being driven by a driver who had no valid licence.
6. The Tribunal has relied upon the photocopy of the driving licence brought on record. The Tribunal appears to have been of the view that the insurer could not discharge the onus of proof which lay on it in this matter.
7. Be what it may, so far as the statutory liability of the insurer appellant contemplated under the provisions of Motor Vehicles Act in the matter relating to the payment of just compensation determined by the Motor Accidents Claims Tribunal is concerned, the mere fact that there was a breach of the terms and conditions subject to which the insurance policy had been issued cannot have the effect of exonerating the insurer of his statutory liability cast upon him in this regard to pay the amount to the third party.
8. In such a situation, it is always open to the insurer to get the amount paid in excess refunded to it from the owner-insured in an appropriate proceedings initiated before the Motor Accidents Claims Tribunal in which proceedings such a dispute can be decided between the insurer and the insured after affording an opportunity of hearing to the insured in accordance with law.
9. It will, therefore, be open to the insurer appellant to initiate an appropriate proceedings for the refund of the amount paid by it to the claimants and establish the breach of the terms and conditions subject to which the insurance policy had been issued.
10. The dismissal of this appeal will not come in the way of the insurer appellant initiating such proceedings.
11. Taking into consideration the totality of the circumstances as brought on record, this appeal is totally devoid of merits, which deserves to be and is hereby dismissed in limine.
12. As prayed, amount of Rs. 25,000 deposited in this Court by the appellant insurer u/s 173 of Motor Vehicles Act be remitted to the Motor Accidents Claims Tribunal concerned so that it may be disbursed to the claimants.