

HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

S.B. Civil Misc. Appeal No. 1172/2024

United India Insurance Co. Ltd.

----Appellant

Versus

Babu Lal

----Respondent

For Appellant(s) : Mr. Pawan Kumar Ojha

HON'BLE MS. JUSTICE REKHA BORANA

Order

03/05/2024

1. Admit. Issue notice.

Notices be filed within a period of one week.

2. Heard the counsel on stay application.

3. Learned counsel for the appellant submits that the learned Tribunal has wrongly issued directions qua the Insurance Company to 'pay and recover' whereas as held by the learned Tribunal itself, the liability of the Insurance Company to indemnify the owner had not been found out. Hence, once the Insurance Company was not liable to pay the compensation, no direction to pay and recover also could have been issued.

In support of the submission, counsel relied upon the judgment of Hon'ble Supreme Court in ***Balu Krishna Chavan Vs. Reliance General Insurance Company Limited & Ors; (2023) ACJ 1546.***

4. So far as the judgment in ***Balu Krishna Chavan's*** case (supra) is concerned, the same was admittedly a matter pertaining to 'gratuitous passenger'. Further, the Hon'ble Apex

Court in the said judgment opined that in cases where the liability of the Insurance Company is decided and is not held to be liable, **ordinarily**, there shall be no direction to 'pay and recover'. However, in the facts and circumstances arising in each case, appropriate orders are required to be made to meet the ends of justice.

The ratio of the above case would not apply to the present matter as **firstly**, it does not pertain to 'gratuitous passenger' and **secondly**, the present is not a case of non coverage. Admittedly, the Insurance policy covers the liability of the unnamed persons (the occupants) qua which a premium of Rs.300 had been paid.

5. In view of the above observations, no case for grant of interim order is made out.

6. Stay petition is hence, **rejected**.

(REKHA BORANA),J