

HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

S.B. Civil Misc. Appeal No. 128/2024

National Insurance Co. Ltd.

----Appellant

Versus

Bilal Khan (Died And Deleted)

----Respondent

For Appellant(s)	:	Mr. Santosh Choudhary
For Respondent(s)	:	Mr. Rajesh Panwar, Sr. Adv. assisted by Mr. Mudit Vaishnav

HON'BLE MS. JUSTICE REKHA BORANA

Order

25/01/2024

1. Learned counsel for the appellant submits that out of the same accident in question, three other claim petitions had been filed and the same were decided vide judgment/award dated 24.09.2019. Vide the said judgment, the Insurance Company was exonerated from the liability to pay the compensation to the claimants. However, directions to 'Pay and Recover' were passed.

The certified copy of the said judgment dated 24.09.2019, on an application preferred by the Insurance Company, was taken on record in the present matter by the learned Tribunal. But as no evidence was led by the Insurance Company, the said judgment was not taken into consideration by learned Tribunal and while deciding issue No.3, learned Tribunal held the Insurance Company liable to pay the compensation.

Learned counsel submitted that the learned Tribunal has acted in excess of jurisdiction and two contrary findings pertaining to the same issue/accident cannot survive.

2. Learned senior counsel appearing for the caveator submits that even if the submission as made by learned counsel for the appellant is to be taken into consideration, the same would be of no effect so far as quantum of compensation and entitlement of the claimants is concerned, as even vide the earlier judgment dated 24.09.2019, the Insurance Company was directed to pay the amount to the claimants and then recover from the driver and owner.

3. In view of the submissions made, Admit. Issue notice.

Notices need not be issued to respondents No.1 & 2 as they are already represented by Counsel.

Issue notice to respondents No.3 to 7 only.

Notices be filed in two sets within a period of one week. One set of notices be given 'dasti' to learned counsel for the appellant for service through registered post, acknowledgment due.

Postal receipts of the 'dasti' notices be filed within a period of one week from the date of receipt of 'dasti' notices.

4. Heard on the stay petition.

5. Admittedly, vide the earlier judgment dated 24.09.2019, the Insurance Company was directed to 'Pay and Recover' and in pursuance to the said judgment, the amount of compensation has also been deposited by the Insurance Company before the Tribunal. It is further admitted that no appeal against the judgment/award dated 24.09.2019 has been preferred by the appellant Insurance Company. Meaning thereby, it cannot be said to be aggrieved of the direction to 'Pay and Recover'.

6. In view of said fact, no interim order in favour of the appellant Insurance Company and against the claimants can be passed in the present matter.

7. The appellant Insurance Company shall be under an obligation to deposit the compensation amount as awarded with the learned Tribunal and the said amount shall be disbursed to the claimants in terms of the award.

8. It is further made clear that the issue whether the Insurance Company would be entitled to 'Pay and Recover' shall remain open to be decided in the present appeal.

9. The stay petition stands **disposed of**.

10. The record of the case be sent to this Court after disbursement of the amount to the claimants.

(REKHA BORANA),J