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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1578-1579 of 2004

NEW INDIA ASSURANCE CO. LTD.

.....APPELLANT(S)

VERSUS

VIMAL DEVI

.....RESPONDENT(S)

O R D E R

1. These appeals, at the instance of the insurance company (the appellant), arise from a motor accident claim case.
2. The appellant is aggrieved by the High Court Order that even though holding in express terms that the liability of the insurer was limited to Rs.50,000/- and interest thereupon, went on to direct it to pay the entire compensation amount of Rs.4,90,000/-, along with interest, to the claimants and then to recover the amount beyond its liability of Rs.50,000/- from the owner of the vehicle involved in the accident.
3. Mr. K. L. Nandwani, learned counsel appearing for the insurance company, submitted that the liability of the appellant being limited to Rs.50,000/-, the High Court was in error in making such a direction. In respect of the submission, he relied upon a Constitution Bench decision of this Court in New India Assurance Co. Ltd. v. C.M. Jaya & Ors., (2002) 2 SCC 278.
4. Mr. M.R. Calla, learned senior counsel appearing for the respondent, in his reply submitted that the reliance placed on the Constitution Bench decision was misplaced and the appellant overlooked the finer point of distinction made in the decision in C.M. Jaya. He submitted that in the case in hand, the High Court had noticed the Avoidance Clause in the policy which was in the following terms:
"AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY.

"Nothing in this Policy or any Endorsement hereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicle Act, 1939, Section 96.

But the Insured shall repay to the company all sums paid by the company which the company would not have been liable to pay but the said provisions."

5. The Avoidance Clause came up for consideration before a three Judges Bench of this Court in Amrit Lal Sood & Anr. v. Kaushalya Devi Thapar & Ors., (1998) 3 SCC 744. In its decision in that case this Court observed:

"13. In the policy in the present case also, there is a clause under the heading: "AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY" which reads thus:

"Nothing in this policy or any endorsement hereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96. BUT the insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions."

14. The above clause does not enable the insurance company to resist or avoid the claim made by the claimant. The clause will arise for consideration only in a dispute between the insurer and the insured. The question whether under the said clause the insurer can claim repayment from the insured is left open. The circumstance that the owner of the vehicle did not file an appeal against the judgment of the Single Judge of the High Court under the letters patent may also be relevant in the event of a claim by the insurance company against the insured for repayment of the amount. We are not concerned with that question here.

15. In the result, we hold that the insurance company is also liable to meet the claim of the claimant and satisfy the award passed by the tribunal and modified by the High Court. The judgment of the High Court insofar as it exonerates the insurance company (5th respondent herein) from the liability, is set aside. The award passed by the Division Bench of the High Court can be enforced against the 5th respondent also. The appeal is allowed to the extent indicated above. The parties will bear their respective costs."

6. Mr. Calla further submitted that in C.M. Jaya & Ors. a Constitution Bench of this Court indeed held that in a policy for limited liability it was not open to the Court to direct the insurance company to make any payment beyond the amount of the limited liability but it took note of the decision in Amrit Lal Sood with approval. He referred to paragraphs 10 and 16 of the judgment in C.M. Jaya where the decision in Amrit Lal Sood is noticed with approval.
7. The Avoidance Clause in the policy in this case makes all the difference and the direction of the High Court to the appellant, insurance company to make payment of the full amount of compensation to the claimants and to recover its dues from the owner of the vehicle is directly in accordance with that Clause. In our view, the submission of Mr. Calla is well founded. The appellant in this case can derive no benefit from the decision in C.M. Jaya.

8. We find no merit in these appeals. These are dismissed.
9. In case the insurance company has not made payment/ deposited the full amount of compensation so far, it must do so within two months from today.

No costs.

.....J
(AFTAB ALAM)

.....J
(R.M. LODHA)

NEW DELHI,
OCTOBER 05, 2010
ITEM NO.105

COURT NO.12

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 1578-1579 OF 2004

NEW INDIA ASSURANCE CO. LTD.

Appellant (s)

VERSUS

VIMAL DEVI & ORS.

Respondent(s)

(With office report)

Date: 05/10/2010 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s)

Mr. K.L. Nandwani, Adv.
for Mr. Debasis Misra, Adv.

For Respondent(s)

Mr. M.R. Calla, Sr. Adv.
Mr. P.K. Manohar, Adv.
Ms. Pratiksha Sharma, Adv.

Mr. K.S. Rana, Adv. (NP)

UPON hearing counsel the Court made the following
O R D E R

The Civil Appeals are dismissed.

(N.S.K. Kamesh)
Court Master

(S.S.R. Krishna)
Court Master

(signed order is placed on the file)