

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 2804 OF 2007

NEW INDIA ASSURANCE CO. LTD.

Appellant (s)

VERSUS

PUNKALI DEVI & ORS.

Respondent(s)

(With office report)

Date: 19/05/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s)

Mr. P.V. Yogeswaran,Adv. (NP)

For Respondent(s)

Mr. Shree Pal Singh,Adv.

UPON hearing counsel the Court made the following
ORDER

The appeal is disposed of in terms of the signed order.

(Shashi Sareen)
Court Master

(Vijay Dhawan)
Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2804 OF 2007

NEW INDIA ASSURANCE CO. LTD.

... Appellant(s)

Versus

PUNKALI DEVI & ORS.

... Respondent(s)

ORDER

This appeal is filed by the Insurance Company, being aggrieved by the judgment and order dated 17.1.2003 passed by the Patna High Court whereby the High Court dismissed the appeal of the present appellant with a direction that the liability to pay the compensation of Rs. 1,44,000/- arising out of the motor accident would be initially on the insurance company and that the amount paid by the Insurance

Company beyond the statutory liability could thereafter be recovered by the insurance company from the insured and the driver. The Insurance Company is aggrieved by the aforesaid judgment and order for the reason that the statutory liability of the Insurance Company under Section 95 (2)(b) of the Motor Vehicles Act, 1939 was only 50,000/-. The Insurance Company has contended in this appeal that in that view of the matter the orders of the High Court as also the tribunal directing for payment of entire liability by the Insurance Company are erroneous.

-2-

On 9.4.2009 an order was passed by this court directing for listing this appeal during the summer vacation, 2009. The said order was passed in presence of the counsel appearing for both the parties and consequential to the said order the matter is listed before us for hearing.

Learned counsel appearing for the appellant is not present. But in view of the judicial order passed and as there is no request of the counsel for the appellant we proceeded to hear the matter with the assistance of the learned counsel for the respondent who has taken us through the documents available on record. He has drawn our attention to a decision of this Court in Oriental Insurance Company Ltd. Vs. Raj Kumai (Smt.) and Ors. 2007 (12) SCC 768. He has submitted that the liability of the insurer was limited to Rs. 50,000/- in terms of insurance policy but since there is a direction of the Motor Accidents Claims Tribunal as also of the High Court, therefore the order be passed for payment of the entire amount of compensation by the insurer to the claimants adjusting the amount already paid to them and also giving liberty to the insurance company to recover the balance amount from the insured and a driver of the vehicle.

In paragraph 11 of the said judgment in Oriental Insurance Co. Ltd. (supra) this court has recorded that in

-3-

certain cases the Supreme Court has after looking into the fact

situation directed the insurance company to make payment in case of liability from the insurer. The amount which is awarded by the tribunal is Rs. 1,44,000/-, out of which Rs. 15,000/- has already been paid to the claimants. Considering the fact situation and particularly in view of the fact that it would be open to the Insurance Company to get the excess amount paid recovered, we dispose of the appeal with a direction that the entire amount of compensation awarded by the tribunal and upheld by the High Court along with interest @ 9% p.a. from the date of the application shall be paid by the insurance company initially after adjusting Rs. 15,000/- which has already been paid to the claimants. We also observe that the insurance company shall be entitled to recover the excess amount paid by it over and above the statutory limit from the registered owner and the driver of the vehicle. In terms of the aforesaid order and direction, this appeal stands disposed of leaving the parties to bear the costs.

.....J.
(Dr. MUKUNDAKAM SHARMA)

.....J.
(Dr. B. S. CHAUHAN)

New Delhi,
May 19, 2009.