

SUPREME COURT OF INDIA

Balbahadur Singh

Vs.

Oriental Insurance Co. Ltd.

C.A.No.8900 of 1999

(S. B. Majmudar and Y. K. Sabharwal, JJ.)

10.03.2000

ORDER

1. In this Special Leave Petition the claimant has come seeking enhanced compensation as compared to the one granted by the High Court in appeal of the respondent-Insurance Company. A Bench of this Court by order dated 3rd December, 1999 directed as under:

"The Motor Accident Claims Tribunal awarded a sum of Rs. 2,62,500/- by way of compensation to the petitioner. The High Court reduced the quantum of compensation to Rs. 1,50,000/-. We think that the appropriate order to be passed at this stage of the proceedings would be to direct the Insurance Company to pay the amount awarded by the Motor Accident Claims Tribunal to the petitioner before considering any question of law which the Insurance Company wants to raise. Accordingly, we direct the Insurance Company to pay the amount to the petitioner as per the award made by the Motor Accident Claims Tribunal within four weeks.

List the matter after four weeks."

2. In view of this order it is not in dispute between the parties that the full claim amount as awarded by the Motor Accident Claims Tribunal is already received by the petitioner-claimant. Now, the only question which survives is whether the Insurance Company had full or only limited statutory defence as permitted by the Motor Vehicles Act, 1988.

3. Learned counsel for the respondent-Insurance Company, placing reliance on a decision of this Court in the case of *British India General Insurance Co. Ltd. v. Captain Itbar Singh*, (1960) 1 SCR 168 : (AIR 1959 SC 1331) submitted that a three-Judge Bench of this Court has taken the view that if there is an agreement between the insured and the Insurance Company as mentioned in the Insurance Policy permitting the Insurance Company to have full defence against such claims, then the Insurance Company will be entitled to defend the action against the insured on all permissible defences available to the insured.

4. We are not inclined to consider this question on the facts of the present case for the simple reason that such a contention was not canvassed either before the Claims Tribunal or before the High Court. Only on this short ground this additional aspect is not considered by us and the Special Leave Petition stands disposed of subject to the clarification that the amount received by the petitioner-claimant, pursuant to order of this Court dated 3rd December, 1999, will be treated to be towards full and final satisfaction of the petitioner-claimant's claim against the respondents and there will be no occasion for him to refund the same.

Order accordingly.