

SUPREME COURT OF INDIA

National Insurance Co.Ltd.

Vs.

Parvathneni

S.LA.(Civil)...../2009 CC 10993/2009

(Markandey Katju and Asok Kumar Ganguly JJ.)

31.08.2009

ORDER

1. Delay of 65 days in filing the Special Leave Petition is condoned.
2. Issue notice.
3. Until further orders, the operation of the impugned order shall remain stayed.
4. In this case, the allegation of the petitioner- Insurance Company is that there was no valid insurance coverage on the date of the accident i.e. 30th November, 2003. The cheque towards premium for renewal of the policy was issued on 29th November, 2003 but the same was dishonoured. Hence, the contention of the Insurance Company is that it has no liability to pay any compensation amount to the claimants since there was no insurance coverage on the date of the accident.
5. Despite this, the High Court has directed the insurance company to pay the compensation amount to the claimants with liberty to the Insurance Company to recover the same from the owner of the vehicle. Prima facie, we are of the opinion if the Insurance Company proves that it has no liability to pay compensation to the claimants, the Insurance Company can not be compelled to make payment and later on recover it from the owner of the vehicle.
6. No doubt, there are some decisions which have taken the view that even if the insurance company has no liability, yet it must pay and later on recover it from the owner of the vehicle. [See for example *Another*¹, *Samundra Devi vs. Narendra Kaur*² (vide para 16), *Oriental Insurance Co. vs. Brij Mohan*³ (vide para 13), *New India Insurance Co. vs. Darshan Devi*⁴ (vide para 21), etc.].
7. We have some reservations about the correctness of the aforesaid decisions of this Court. If the insurance company has no liability to pay at all, then, in our opinion, it can not be compelled by order of the Court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner

of the vehicle. In our view, Article 142 of the Constitution of India does not cover such type of cases. When a person has no liability to pay at all how can it be compelled to pay? It may take years for the insurance company to recover the amount from the owner of the vehicle, and it is also possible that for some reason the recovery may not be possible at all. Hence, we direct that the papers of this case be placed before Hon'ble the Chief Justice of India for constituting a larger bench to decide the following questions:

(1) If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle.

(2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?

¹(2008) 7 SCC 526

²(2008) 9 SCC 100

³(2007) 7 SCC 56

⁴(2008) 7 SCC 416