
(2012) 11 JH CK 0075

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 5902 of 2006

Bhag Chand Jain

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 174

Citation : (2012) 11 JH CK 0075

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Lalit Kumar Lal, for the Appellant; Nisha Thakur and J.C. to S.C. III, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh

1. Heard Learned Counsel for the parties. Petitioner has sought quashing of the requisition of the certificate (Annexure-7) issued by respondent No. 2, 5th Additional District & Sessions Judge cum Motor Vehicle Accident Claim Tribunal (M.V. A.C.T.), Giridih to the respondent no. 3, District Certificate Officer, Giridih for recovery of a sum of Rs. 6,37,854/- with interest @ 12% p.a. u/s 174 of the M.V. Act, 1988 from the petitioner in view of the judgment and award passed in Claim Case no. 15 of 1991 decided on 21.9.2002 by the said Court and the award dated 5.10.2002.

2. Petitioner is the owner of the vehicle in question in respect of which an accident took place and claim was preferred by the dependant of the deceased being Claim Case No. 15 of 1991 before learned Claim Tribunal, Giridih. The owner apart from the Insurance company appeared and contested the case. It is the contention of the petitioner-owner of the vehicle that the Tribunal did not determine any fault on the part of owner and also did not come to a finding that Insurance company is entitled to recover the awarded amount from the owner on

account of the same. Learned Counsel for the petitioner submitted that he had contested the contention of the Insurance company that the driver of the vehicle was not possessing valid driving license at the time of accident. It is further submitted on behalf of the petitioner that the Insurance company, thereafter, after issuance of the cheque of the awarded amount to the claimant made a request before the Claim Tribunal, Giridih for issuance of certificate for recovery of the awarded amount from the owner - petitioner in question vide Annexure-6 and immediately, thereafter, a requisition was issued by the learned Tribunal vide Annexure-7. It is submitted that issuance of requisition of the certificate does not meet Section 174 of the M.V. Act as the very requirement of the section is not being satisfied since the Tribunal has not come to the finding that amount is due from the owner of the vehicle under the award. Moreover, after submission of the requisition the Tribunal ought to have issued notice to the petitioner to show cause against the said requisition of certificate.

3. Learned Counsel for the respondent-Insurance Company, on the other hand submitted that the Tribunal had framed certain issues for determination of the liability of the parties. In respect of issue no. 4 the Tribunal took into account the contention of the Insurance Company that at the time of accident the driver of the said vehicle had no valid license of heavy motor vehicle rather he was possessing license of light motor vehicle. In this regard Insurance Company had relied upon the report of the District Transport Officer, Hazaribag (Ext. B). It is further submitted that while deciding the issue no. 4 the Tribunal categorically held that the Insurance Company has statutory liability to pay compensation to the claimants, but the Insurance Company shall have option to recover it from the owner of the vehicle. It is submitted that the petitioner, thereafter, preferred this writ petition and further filed Misc. Appeal No. 333 of 2003 perhaps being conscious of the categorical findings made by the Tribunal against the owner-petitioner holding him liable to pay the awarded amount to the Insurance Company. The said Misc. Appeal was dismissed by This Court on 22.2.2007. It is further submitted on behalf of the respondent-Insurance Company that since the judgment of the learned Tribunal clearly held that the Insurance Company shall have the option to recover it from the owner of the vehicle, steps were taken on their behalf which lead to the issuance of certificate by the learned Tribunal, Giridih to the District Certificate Officer, Giridih for realization of the amount from the petitioner. It is further submitted that petitioner's appeal having been dismissed, findings and observations recorded in the judgment and award have attained finality which rendered owner's liability to reimburse the awarded amount to the Insurance Company for which certificate proceeding has been initiated. It is further submitted by Learned Counsel for the respondent that all these questions are open for the petitioner to be raised before the Certificate Officer, who has the jurisdiction to decide the objection of the objector u/s 9 of Public Demand Recovery Act.

4. I have heard counsel for the parties at length and gone through the relevant documents including the judgment and award rendered by the M.V.A.C.T. From

perusal of the findings recorded by the Claim Tribunal specifically in respect of Issue no. 4 which deals with the contention of the Insurance Company that the driver of the vehicle in question had no valid license of heavy motor vehicle, it appears that after dealing with the rival contentions of the parties learned Tribunal came to a specific finding that the Insurance Company is liable to pay compensation to the claimant and shall have the option to recover the same from the owner of the vehicle i.e. petitioner. The challenge to the instant judgment and award by the petitioner himself in the aforesaid miscellaneous appeal has been squarely dismissed vide judgment dated 27.2.2007. The Insurance Company, therefore, has rightly moved an application for issuance of certificate to the District Certificate Officer, Giridih by making request before the Tribunal. The certificate proceeding have been initiated before the District Certificate Officer, Giridih-respondent no. 2 and petitioner has without availing the remedy under the P.D.R. Act straightaway moved This Court under Article 226 of the Constitution of India.

5. In the circumstances, I find that once the remedy open to the petitioner to assail the judgment and award of the learned Claims Tribunal has been rejected by dismissal of Miscellaneous Appeal by This Court, the findings of the learned Tribunal have attained finality and the Insurance Company is fully justified in seeking recovery of the awarded amount by way of certificate proceeding under the provisions of M.V. Act, 1988. I find no merit in the writ application and accordingly, the same is dismissed.