

(2014) 04 MP CK 0012
In the Madhya Pradesh High Court
Case No : W.P. No. 7638 of 2009

Dabbal and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 140 141 144 146 147

Citation : (2015) 4 ACC 185 : (2015) ACJ 1815

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : Pramod Thakre, Advocate for the Appellant; S.K. Rao and V.K. Pandey, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Rajendra Menon and A.K. Sharma, JJ.

1. Even though notice was issued to respondent No. 2 and the matter is pending since 2009, none is appearing for the said respondent. Challenge in this writ petition under Article 227 of the Constitution is made to an order dated 25.3.2009 passed by the Fifth Motor Accidents Claims Tribunal, Chhindwara in Execution Case No. 109 of 2002. By the said order an application filed by petitioners for execution and recovery of a sum of Rs. 50,000 awarded under the provisions of section 140 of the Motor Vehicles Act against the respondent No. 2, owner of the vehicle, is rejected.

2. Arising out of death of one Shankar alias Bhoora, son of the petitioner Nos. 1 and 2 and husband of petitioner No. 3 and father of petitioner No. 4, the claim petition was filed under section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 5,00,000. In the said proceedings pending under section 166 an application was filed under section 140 of the Motor Vehicles Act claiming interim compensation. This application was allowed and vide order dated

15.2.2000, Annexure P2, under the principle of no fault liability, the respondent No. 2, owner of the vehicle, was directed to make payment of this amount. However, in the meanwhile, on the ground that various documents and other materials are not available, claim petition was withdrawn by filing an application, Annexure P3, on 22.12.2004 under Order 23, rule 3, Civil Procedure Code. Accordingly, claim petition was dismissed as withdrawn. As the amount of interim compensation of Rs. 50,000 awarded under section 140 of the Motor Vehicles Act was not paid, application for execution was filed. Respondent No. 2 raised an objection and submitted that as the interim award under section 140 has merged into the final award, dismissing the claim petition, the execution proceeding was not maintainable. Based on the judgment rendered in the case of National Insurance Co. Ltd. Vs. Kalyan Singh and Others, , this objection having been sustained and the execution proceeding dismissed, this writ petition has been filed.

3. Mr. Pramod Thakre, learned counsel for the petitioners, argued that an award and proceedings held under section 140 can be executed even if the claim petition is dismissed and in dismissing the application for execution it is argued that an error has been committed by the Tribunal. Placing reliance on a judgment of the Apex Court in the cases of Eshwarappa @ Maheshwarappa and Another Vs. C.S. Gurushanthappa and Another, and Indra Devi and Others Vs. Bagada Ram and Another, and a judgment by a Division Bench of this court in the case of Krishna Mourya and Others Vs. J.P. Sharma and Others, , it was submitted by learned counsel that in placing reliance on the judgment in the case of National Insurance Co. Ltd. Vs. Kalyan Singh and Others, and rejecting the claim, an error has been committed.

4. Mr. S.K. Rao, learned senior counsel for the insurance company, argued that as insurance company is held not liable, he has no say in the matter.

5. As already indicated above, none is appearing for the respondent No. 2 even though notices have been issued and matter is pending since 2009. Learned trial court has rejected the claim petition only on the ground that interim order under section 140 merges with the final order passed under section 166. As the claim petition is dismissed, no execution application is permissible.

6. Prima facie the order impugned seems to be incorrect, in view of the principles laid down in the case of Eshwarappa @ Maheshwarappa and Another Vs. C.S. Gurushanthappa and Another, . In the aforesaid case, the Supreme Court has taken note of the provisions of sections 140, 141, 144, 146, 147 and 149 of the Motor Vehicles Act and it is held that no fault liability imposed under section 140 is an independent act and even if the original claim is rejected, still on the principle of no fault, compensation under section 140 can be awarded. Keeping in view the aforesaid legal principle, we are of the considered view that the matter has to be reconsidered. Even though based on the material available this court could go into the merits of the claim and decide it but considering the fact that respondent No. 2 is not available and an ex parte order behind their back is not

in the interest of justice, it is thought appropriate to remand the matter to the executing court with a direction to take note of the legal principles as indicated hereinabove and decide the execution application after hearing all concerned afresh in accordance with law.

7. In view of the above, this petition is allowed. Impugned order dated 25.3.2009 is quashed and the matter is remanded to the executing court for deciding the execution application afresh. Learned executing court is directed to decide the matter within a period of 60 days from the date of receipt of certified copy of this order. With the aforesaid, this writ petition stands allowed and disposed of.

C.C. as per rules.