(2013) 07 AHC CK 0080

In the Allahabad High Court

Case No : C.M.W.P. No. 5548 of 2013

I.C.I.C.I. Lombard General Insurance Co. Ltd. APPELLANT

Vs

Sirajuddin (D) and Others RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2014) 1 ACC 958 : (2013) 9 ADJ 344 : (2014) 1 ALJ 195 : (2013) 100 ALR 491 : (2013) 5 AWC 4399

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Rahul Sahai, for the Appellant; V.P. Mishra and Rajesh Tripathi, for the Respondent

Judgement

Tarun Agarwala, J.—Heard Sri Rahul Sahai, the learned counsel for the petitioner and Sri Rajesh Tripathi, the learned counsel holding the brief of Sri V.P. Mishra, the learned counsel for the petitioner. A claim application was filed under the Motor Vehicles Act. The Tribunal gave an award granting compensation to the claimants. The Tribunal, in the said award, also gave a right to the insurance company to recover the amount from the owner of the vehicle in terms of Section 149(2) of the Motor Vehicles Act. The insurance company accepted the award and deposited the amount before the Tribunal alongwith an application praying that the amount may be recovered from the owner and that the amount may not be released to the claimants till a security is provided by the owner of the vehicle or attachment of the vehicle is not made. This application was partly allowed by issuance of notice to the owner of the vehicle but the prayer for providing security and/or attachment of the vehicle was rejected with a further direction that the amount deposited by the insurance company could be withdrawn by the claimants. The insurance company, being aggrieved by this part of the order, has filed the present writ petition.

2. The learned counsel for the petitioner insurance company submitted that till such time as the interest of the petitioner is not secured, the amount deposited

by the petitioner could not be released in favour of the claimants as held by the Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, and in the case National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, , in which it was held:

Before release of the amount of the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the concerned Regional Transport Authority. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, i.e., the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

3. The learned counsel for the petitioner submitted that the Tribunal committed a manifest error in allowing the claimants to withdraw the amount without securing the interest of the insurance company and that the Tribunal ought to have waited for the security to be deposited by the owner of the vehicle before realizing the amount in favour of the claimants.

4. Having heard the learned counsel for the claimants, the Court finds that the aforesaid judgments of the Supreme Court were considered in various decisions of this Court and the directions of the Supreme Court were explained.

5. In Smt. Bhuri and Others Vs. Smt. Shobha Rani and The New India Insurance Company Ltd., , the Court held that appropriate safeguards were given to the insurance company to recover the amount from the owner of the vehicle as per the decision of the Supreme Court and, therefore. adequate measures has been given to protect the interest and that the said purpose was satisfied and it was not meant that the Supreme Court was undermining the interest of the claimants whose welfare was supreme. The Court held that the burden of recovering the amount within the provisions of the Act itself had been placed upon the insurer and that the claimants, who have obtained the award should not made to suffer through any observation made by the Supreme Court.

6. in Smt. Nisha and others v. Motor Accident Claims Tribunal and others, in Writ Petition No. 59746 of 2007, decided on 13th December, 2007, the Court held that since the Tribunal had already issued notice to the owner of the vehicle and that the Tribunal would take all steps including attachment of the vehicle and calling upon the owner of the vehicle to furnish security, was by itself sufficient not to create any impediment to the claimant for release of the amount.

7. In the light of the aforesaid decisions, this Court is further of the opinion that the direction of the Supreme Court in the aforesaid decisions to the effect that

before releasing the amount to the claimants, the owner of the offending vehicle shall furnish security of the entire amount is not mandatory in nature and is only directory to the extent that the application should be filed by the insurance company for recovery of the amount. Once that application is filed and notices are issued that becomes sufficient to protect the interest of the insurance company. In the light of the aforesaid, this Court does not find any error in the impugned order. The writ petition fails and is dismissed.