(2002) 01 RAJ CK 0136

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1414 of 2000

New India Assurance Co. APPELLANT

Vs

The MACT Kishangarhbas and Others RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2004) ACJ 58 : (2002) 3 RLW 1792 : (2002) 3 WLC 57 : (2002) 4 WLN 714

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Tripurari Sharma, for the Appellant; Manu Bhargava, Ashok Gaur and Ronak Singh for M.R. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Sharma, J.—Initially claimant impleaded petitioner insurance company as respondent in the claim petition but from subsequently on the oral request of claimant''s counsel the name of the petitioner company was deleted. An award thereafter came to be passed against the vehicle owner and the driver. The claimant sought execution of the award by filing execution petition. In the execution proceedings the vehicle owner made an application u/s 149(2) of the Motor Vehicles Act 1988 (for short the M.V. Act) to declare the petitioner insurance company as judgment debtor. Learned tribunal allowed the application vide order dated March 8, 2000 declaring the petitioner Company liable as judgment debtor. Against this order of the tribunal that the petitioner company has filed the instant writ petition.

2. Learned counsel appearing for the petitioner company canvassed that the insurer cannot be saddled with the liability of claim granted by the Tribunal, where the insurer was not impleaded as a party. It was further contended that the claims Tribunal had no jurisdiction to modify the award after it was pronounced. Reliance was placed on Gurdial Chand Bhasin v. Anil Kumar (1) and

New India Assurance Co. v. Jamuna Devi (2).

3. Per contra learned counsel for the respondents supported the impugned order and placed reliance on Urmila Pandey v. Khalil Ahmed (3) and Sheodev Prasad Tiwari v. District Judge (4).

4. I have pondered over the rival submissions and scanned the record.

5. It is established from the material on record that the petitioner insurance company had issued insurance policy No. 4518270025 in respect of vehicle DIL 1842 which was involved in accident and on the date of accident i.e. December 1, 1988 the insurance policy was valid.

6. From Sub-section (2) of Section 149 of the M.V. Act it will appear that no sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after commencement of the proceedings in which the judgment is given the insurer had notice through the court of the bringing up the proceedings or in respect of any judgment so long as the execution is stayed thereof, pending an appeal. The sub-section then provides the defence which the insurer may raise upon such notice being given to them. The provision specifically refers to notice being given even at the stage after the judgment of the Tribunal has been given.

7. In Sheodev Prasad Tiwari v. District Judge (supra) the Allahabad High Court had occasion to examine section 96(2) of Motor Vehicles Act 1939 which is pari materia to Section 149(2) and it was held that-

"The purpose behind Sub-section (2), clearly is that the insurer should have an opportunity to contest the enforcement of the judgment oh the defences enumerated in that sub-section. Once this opportunity is available, it is of no consequence that the same is, accorded subsequent to the judgment or prior to the delivery thereof. In case these defences prevail in a particular case the effect of the judgment as against the insurer may be nullified even at the stage. The insurer therefore, cannot claim to be prejudicial merely on the ground that notice issued was subsequent to the judgment and not prior to the same.

8. In the instant case as already stated the petitioner insurance company was impleaded as party in the claim petition and it had notice of the claim proceedings but instead raising defences under Sub-section (2) of Section 149 of the M.V. Act, the petitioner company did accept the order of the claims tribunal whereby its name was deleted. The petitioner insurance company itself had abandoned the opportunity to raise the defences permissible under Sub-section (2) of the Section 149 of the M.V. Act and therefore has been rightly adjudged as judgment debtor by the learned tribunal. I do not find any merit in the submissions of the learned counsel for the petitioner. The case law cited by him is not applicable in the facts and circumstances of the instant case.

9. The writ petition being devoid of merit stands dismissed without any order as to costs.