
(2009) 01 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 57 of 1990

New Indiaassurance Co.Ltd.

APPELLANT

Vs

VIth Addl District Judge, Azamgarh and Others

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (2009) 01 AHC CK 0063

Hon'ble Judges : S.U.Khan, J

Final Decision : Disposed Of

Judgement

S.U. Khan, J.

1. List revised. No one appears for the contesting respondents.

2. Heard learned counsel for the petitioner.

3. Respondent Nos. 2 and 3, Smt. Vihuli and Sitamber (wife and husband) filed a claim petition under Motor Vehicles Act, 1939 stating therein that their son Teja had died in an accident by a tractor belonging to respondent No. 4 Suryabhan Singh. National Insurance Company was respondent No.9 in the claim petition. Photostat copy of certified copy of formal order of the said case has been shown by the learned counsel for the petitioner to the Court containing the said details. The claim petition was allowed on 12.5.1986 for Rs. 24, 000/ against respondent No. 4 (owner of the tractor) and respondent No. 5 (driver of the tractor) only. Claim was not decreed even against National Insurance Company, which was respondent No. 9 in the claim petition, as it could not be shown that the tractor was insured with the said company. Photostat copy of certified copy of the judgment has also been shown by the learned counsel for the petitioner to the Court containing the said details. Against the said judgment and order, F.A.F.O. No. 644 of 1986 was filed by owner and driver, which has been dismissed in default on 19.11.2008.

4. After passing of the award dated 12.5.1986, the claimants respondents No. 2

and 3 filed execution application, which was registered as Case No. 3 of 1986. Smt. Vihuli v. Suryabhan Singh. In the execution case, owner of the tractor Suryabhan Singh filed an application on 7.2.1987 praying that the awarded amount be recovered from New India Assurance Company, i.e. petitioner, as the tractor was insured with it. Said application was given on 7.2.1987. On 22.5.1987, notices were issued to the petitioner to show cause as to why it should not be impleaded. Thereafter, through order dated 6.4.1989, copy of which is Annexure1 to the writ petition, petitioner was impleaded as J.D. No. 3. Thereafter, petitioner filed an application praying that it might be permitted to crossexamine the witnesses as it was not a party in the original claim petition.

That application was given on 23.5.2008, copy of which is Annexure2 to the writ petition. Said application was rejected by M.A.C.T./Vith A.D.J., Azamgarh through order dated 4.8.1989. The said order has been challenged through this writ petition.

In this regard, the Court below considered Section 96(2) of old Motor Vehicles. Act, 1939 under which proceedings were taken. The said subsection without its clauses is quoted below:

"(2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so 1 long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely."

5. Court below on the basis of a judgment reported in S.P. Tiwari v. District Judge, Writ Petition No. 3017 of 1984 decided on 10.4.1985 (name of the Journal is not properly mentioned) held that petitioner was not entitled to crossexamine the witnesses as the claim petition had already been decided and that petitioner was liable to pay the awarded amount even though neither till the passing of award it was aware of the proceedings nor it was party till then.

6. In my opinion, the Court below has not properly interpreted Section 96(2) of the Act. Certain objections are permissible to be raised by the Insurance Company. If the principle of law as understood by the Court below is accepted, no claimant would make the correct Insurance Company a party in the claim petition and the owner of the vehicle in collusion with the claimant would allow the claim petition to be decreed and thereafter the decree would be sought to be recovered from the correct Insurance Company (which in fact had insured the vehicle).

7. Accordingly, in my opinion, the prayer of the Insurance Company for crossexamination of the witnesses was quite proper. As the Insurance Company, petitioner has not challenged the order through which it was directed to be impleaded, hence no opinion is being expressed regarding correctness of the said

order.

8. Neither the owner of the vehicle nor the claimants intimated the tribunal during pendency of the claim petition that the vehicle was insured with the petitioner. Accordingly, the owner cannot be permitted to be heard afterwards in the execution that the awarded amount should be made payable by the petitioner Insurance Company.

9. In case the claimants intend to file an application for setting aside the award passed in their favour on the ground that the proper Insurance Company was not made party, then they shall be permitted to do so by the Tribunal. If such an application is filed, then the entire award must be set aside and the matter shall be decided afresh after providing full opportunity of hearing to the petitioner also. However, if claimants do not file such an application, petitioner is not liable to pay any amount and in that eventuality the execution shall proceed against owner and driver of the vehicle.

10. Writ petition is accordingly disposed of.

11. If the claimants do not file application for recall of the award dated 12.5.1986 within three months from the date on which certified copy of this order is filed before the tribunal below after serving a copy of the same on their learned counsel before the tribunal below, then the amount deposited by the petitioner under interim order passed in this writ petition shall be refunded to the petitioner. It is needless to add that if the said amount has not yet been paid to the claimants, then the same shall not be paid.