

(2011) 03 GUJ CK 0013
In the Gujarat High Court
Case No : C.R.A. No. 746 of 2001

Oriental Insurance Co. Ltd.		APPELLANT
	Vs	
Rana Devabhai Koli and others		RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 147(2), 147(5), 149

Citation : (2012) ACJ 1959

Hon'ble Judges : S.G. Gokani, J

Bench : Single Bench

Advocate : Maulik J. Shelat, for the Appellant; B.P. Munshi and Ms. Nirali B. Munshi, for the Respondent

Final Decision : Allowed

Judgement

Sonia Gokani, J.—Present petitioner was the original opponent No. 3, Oriental Insurance Co. Ltd., which has preferred this revision application u/s 115 of the CPC against the order passed by Motor Accidents Claims Tribunal (Aux.), Jamnagar, in Claim Execution Application No. 366 of 1998 on 16.4.2001.

1.1 The opponent No. 1 Rana Devabhai Koli is the original claimant, who met with an accident while travelling on tractor No. GJ 11-8745 with trailer No. GJ 11-5057 on 8.4.1993. A claim petition for compensation under Motor Vehicles Act being Claim Petition No. 338 of 1993 was preferred against the present opponent Nos. 2 and 3 as well as Tata Chemicals Limited and one Pratap & Company and one unknown insurance company was also impleaded. Present petitioner was the original opponent No. 6 in the claim petition which filed its written statement vide Exh. 27 denying all the allegations and averments including the contentions that the claimant failed to give name of the insurance company of the tractor and, therefore, there was no relation with the claim filed before the Tribunal. The policy issued by opponent No. 6, the present petitioner, was issued to Pratap & Company (original opponent No. 4) under the Workmen's Compensation Act

and, therefore, it was contended that only the Labour Court, Jamnagar can exercise its jurisdiction under Workmen's Compensation Act and with no details available from present opponent Nos. 2 and 3, owner and driver of the tractor, with regard to insurance company after ownership of vehicle changed hands, it had denied its responsibility. Admittedly, present petitioner was impleaded in the capacity of its relation with Pratap & Company and there was no whisper with regard to its connection with the present opponent Nos. 2 and 3.

The judgment and award was passed in impugned M.A.C.P. for the sum of Rs. 1,19,700 with proportionate costs and interest at 12 per cent against opponent Nos. 2 and 3 herein. However, the claim qua the present petitioner, Pratap & Co. as well as Tata Chemicals, was dismissed.

2. Pursuant to the said judgment and award, the execution petition being No. 366 of 1998 was preferred before Tribunal against the present opponent Nos. 2 and 3, wherein for the first time on 25.6.2000 opponent No. 3 contended, inter alia, that the vehicle in question was insured with the present petitioner, i.e., Oriental Insurance Co. Ltd. Accordingly, the present petitioner was issued notice and was joined as opponent No. 3 in the said execution petition.

3. The petitioner in its written objection, Exh. 19, had fervently objected to this joining and also had averred that the judgment and award being against only opponent Nos. 2 and 3, the claim qua the present petitioner cannot survive. It was also averred that execution court would not have jurisdiction to go beyond the decree/award. However, disallowing the said objections, the present petitioner was directed to deposit the decretal amount within 60 days from the date of order and being aggrieved by the impugned order of the Tribunal, the present petition is moved with the various grounds enumerated in the petition.

4. This court has heard at length learned advocates representing both the sides. The learned advocate Mr. B.P. Munshi appearing for the original claimants (the present opponent No. 1) and learned advocate Mr. Maulik Shelat for the applicant Oriental Insurance Co. Ltd. Whereas rule is duly served on the respondent Nos. 2 and 3 but they are not represented by anyone.

5. Learned advocate for the insurance company has stated that it was not joined earlier but only at the time of filing of execution petition and it is impermissible under the law for the executing court to go behind the decree. Reliance is placed on the judgment of the Apex Court in the case of Ramesh Singh (died) By LRs and Others Vs. State of Haryana and Others, and in the case of Bai Shakriben (dead) by Natwar Melsingh and Others Vs. Special Land Acquisition Officer and Another, , wherein it is held that risk of labourers is not covered and there are other recourses open to such passengers. Reliance is sought to be placed on Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, . The learned advocate vehemently argued before this court that the onus is on the petitioner to bring before the Tribunal the insurance policy as it is virtually impossible for the insurance company to find out whether a particular vehicle is insured with it or

not. On being inquired about computerization, the learned advocate has submitted that said process is still under way and it is not possible to extract the details of all insurance policies in absence of specifications. And, this matter is nearly 18 years old. Reliance is also placed on the judgment of the Apex Court in the case of H.U.D.A. and Another Vs. Anil Sabharwal and Others, .

As against it learned advocate Mr. B.P. Munshi has forcefully submitted that there is a complete dishonesty on the part of the insurance company which, though aware of the insurance policy of the vehicles involved, chose not to produce the said policy and also not to reveal the true picture before the Tribunal. He also relied on the judgment of the Division Bench in the case of AIR 2000 3611 (SC) and in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, . He has also sought reliance on the decision of this court in the case of Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala, . He urged this court to closely look at section 147(2) and section 147(5) of the Motor Vehicles Act, which is a benevolent legislation and urged that there is no perversity in the order of the Tribunal which may warrant interference from this court u/s 115 of the Code of Civil Procedure.

6. This is one case where unfortunately for an accident of the year 1993, an award was passed and sought to be executed in the year 1998, wherein for the first time, it has been revealed that vehicle in question was insured with the present petitioner, Oriental Insurance Co. Ltd. As the award has been passed against respondent Nos. 2 and 3 only, the present petitioner cannot be said to be a judgment-debtor in the said award.

7. The question, therefore, would be as to whether the insurance company can be impleaded as judgment-debtor in the execution petition without there being any decree/award against it and whether the same would not amount to denying the insurance company its right to defence.

8. A heavy reliance is sought to be placed by the court below on section 149 of the Motor Vehicles Act. It has also heavily banked upon the fact that this very insurance company was impleaded as opponent No. 6 and it had ample opportunity to raise all possible defences including non-covering of claim of labourer in the insurance policy.

9. Undoubtedly, this court very sparingly needs to exercise revisional powers u/s 115 of the Code of Civil Procedure. It also needs to be broadly kept in mind that in the event of erroneous exercise of powers below, the same should be used essentially to do justice to the parties. Much time has lapsed from the date of occurrence and passing of the award as also from the time the proceedings of execution petition are undertaken. Opponent Nos. 2 and 3, who were the labourers, may need to further wait for the fruits of decree/award as recovery from the original driver and owner of the vehicles, opponent Nos. 2 and 3, may be a herculean task. However, the fact remains that though the present petitioner was impleaded as party opponent No. 6 in the original claim petition

since it was nowhere contended that it had issued insurance policy of the vehicle proved to have been involved in the accident in question and owned by opponent No. 3, it had no opportunity to raise required defences. Thus, in absence of any specific averment on the part of the original opponent Nos. 1 and 2, the court could not have held the present petitioner responsible for the payment of the award.

10. The insurance company is supposed to be resourceful in collating the data as also to verify the existence of the policy, but in absence of any such averment and contention, it is not possible to saddle the insurance company with the said task to verify this aspect, more particularly, in absence of any evidence of such a nature. Under the circumstances, it would not be feasible to say that u/s 149, sufficient notice much less sufficient opportunity was given to the insurance company to raise all possible defences. In the order passed by the Executing Court, one can understand the concern and sympathy for the present opponent No. 1 but that would not permit the court to go behind the award which was not challenged in any proceedings. Insurance company was impleaded as the party opponent at the stage of execution of award only and, thereby an opportunity of raising its defences is said to have been denied. Had it been impleaded in the original petition, as the insurance company for the vehicles proved to have been involved in the accident minus the physical presence of the insurance policy, it could have been still said that opportunity was availed for raising all possible defences. Absence of award against the present petitioner is also suggestive of the fact that Tribunal itself was not convinced about sufficiency of evidence to saddle the insurance company with the liability. It will not be feasible to accept the submission of learned advocate Mr. Munshi that there was dishonest attempt on the part of the insurance company not to have revealed the true facts before the Claims Tribunal, in absence of any such positive material indicating such an ill-design of non-disclosure.

Presuming for the sake of argument that it was so in absence of finding that the same was a fraud on the court of law, party cannot be thrust upon the liability at the stage of execution. The court is in agreement with the submission of the learned advocate for the insurance company that the Executing Court in the instant case would not be in a position to grant any other consequential relief which would not flow directly or necessarily from a decree/ award nor would it be in a position to question the legality and correctness of the award. It would be appropriate to implead insurance company in the appeal/review, if there be any or in any other appropriate proceedings to allow the judgment-debtors to recover the said amount from the insurance company after due modification of award. But in the present form of the award, order passed by the Executing Court cannot be sustained and the same will have to be interfered with by way of revisional jurisdiction.

11. Learned advocate for the petitioner fairly submitted that the original petitioner was engaged as a labourer by Pratap & Co. Insurance policy issued in

favour of Pratap & Co. contractor of Tata Chemicals (opponent Nos. 4 and 5 respectively in the claim petition), was towards the liability arising under the Workmen's Compensation Act as was clearly contended and forum to litigate was not the Motor Accidents Claims Tribunal. Registration of the vehicle in the name of opponent No. 3 with the R.T.O. though was on the record with no detail of policy of insurance with the M.A.C.T., Tribunal, award restricts the liability to opponent Nos. 2 and 3 only.

Original petitioner being a passenger/ workman carrying salt from and on behalf of Pratap & Co. in the tractor, whether could have been benefited in the presence of insurance company in absence of any such liability in the terms and conditions of the policy is not the question to be gone into by this court in this revision. Executing Court when in terms observed in its impugned order that the revelation of insurance company (present petitioner) and its relation with opponent No. 2 came up for the first time on 19.7.2000, his order cannot be sustained for want of legal force. Overriding effect of provision of section 149 of the Motor Vehicles Act under the circumstances would not be available to the original claimant.

In this order, principles laid down in all the authorities cited by both the sides are not reproduced to avoid burdening the same further. Accordingly, the following order:

The order passed by Executing Court dated 16.4.2001 in Claim Execution Application No. 366 of 1998 is hereby quashed.

It will be open for the original petitioner (present opponent No. 1) and the opponent Nos. 2 and 3 (original opponent Nos. 1 and 2) to implead the insurance company (present petitioner) in the appropriate proceedings where the issue of limitation shall be viewed by the concerned court keeping in mind the continuity of present proceedings before the High Court in Civil Revision Application No. 746 of 2001. Furthermore, the said course also will not bar the judgment-creditor to pursue its recourse against the present opponent Nos. 2 and 3 as provided under the law. It will be open for the respondent (original claimant) to approach the grievance cell of the insurance company which will sympathetically consider the case of the petitioner and the compensation arising from the benefit of the policy which may be duly and broadly considered also keeping in view the time factor and the financial and social condition of the applicant sympathetically. Rule is made absolute in terms thereof with no order as to costs.

Revision allowed.