(2013) 12 AHC CK 0157

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 64792 of 2013

Pitamber — APPELLANT

Vs

Motor Accident Claims Tribunal/Additional District Judge, Fatehpur and Others — RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 2 ACC 61 : (2014) 1 ADJ 144 : (2014) 102 ALR 121 : (2014) 2 AWC 1387

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Ram Singh, for the Appellant;

Judgement

Tarun Agarwala, J.—Heard the learned counsel for the petitioner and the learned Standing Counsel.

The petitioner is the claimant and had filed a claim application under the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988). The Tribunal gave an award dated 27th February, 2009 awarding compensation of Rs. 55,000/- alongwith 6% interest per annum for a period of three years. The compensation was to be paid by the insurance company, who was given a right to recover the amount from the owner of the vehicle. Based on this award, the insurance company deposited the entire decretal amount.

The petitioner, being the claimant, moved an application for withdrawal of the amount, which application was rejected on the ground that the owner of the vehicle had not provided security to the satisfaction of the Tribunal and, consequently, the amount cannot be released, since the interest of the insurance company was required to be protected. The Tribunal, while rejecting the application, relied upon a decision of the Supreme Court in Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, and Smt. Sheela Devi and Others Vs. Additional District Judge and Others, . The petitioner, being aggrieved by the said order, has filed the present writ petition.

2. The Supreme Court in Nanjappan''s case (supra) 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. Having heard the learned counsel for the claimant, 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.

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 claimant 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 claimant, who has obtained the award should not made to suffer through any observation made by the Supreme Court.

4. 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.

5. A similar issue came up before the Court in I.C.I.C.I. Lombard General Insurance Co. Ltd. Vs. Sirajuddin (D) and Others, , in which this Court held that it is not mandatory that the owner of the vehicle is required to furnish security before release of the amount to the claimant and that such directions was only directory to the extent that the application should be filed by the insurance company for recovery of the amount, which by itself was sufficient to protect the interest of the insurance company. In the instant case, the Court finds that the insurance company has already filed an application u/s 174 of the Act of 1988 for recovery of the amount from the owner of the vehicle and that notices has already been issued to the owner of the vehicle. The Court is of the opinion that

sufficient protection has been granted to the insurance company and that there is no reason why the amount already deposited by the insurance company should not be released so that the award is satisfied.

In the light of the aforesaid, the Court finds that the impugned order cannot be sustained and is quashed. The writ petition is allowed. The Tribunal is directed to release the amount forthwith.