(2008) 07 MP CK 0034

In the Madhya Pradesh High Court

Prem Narayan Bhagel and Others — APPELLANT

Vs

Banchandra Bhagel and Others — RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 107, 111, 138, 147, 159

Citation : (2008) ILR (MP) 2041 : (2008) 5 MPHT 360 : (2008) 4 MPLJ 148

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Judgement

S.K. Gangele, J.

Petitioners have filed this petition challenging the order dated 12-2-2008 passed in execution proceedings registered as Claim Execution No. 19/06-07.

Petitioners-claimants filed a claim application before 3rd Additional Motor Accident Claims Tribunal (Fast Tract Court), Dabra, District Gwalior with regard to payment of compensation on account of death of one Kishan Lal Bhagel. The aforesaid application was registered as Claim Case No. 19/06. Learned Claims Tribunal passed an award on 23-8-2007 and held that respondent Nos. 1 and 2 would be severally and jointly liable to pay an amount of Rs. 1,59,500/- to the petitioners-claimants. The Claims Tribunal further directed that respondent No. 3 shall make the payment to the claimants and thereafter it shall recover the amount from the respondent No. 2, Ramswaroop. Respondent No. 3 is an Insurance Company, The directions issued by the Claims Tribunal are in Hindi, which have been reproduced in verbatim as under:

?1? vukosnd dzekad 1 o 2 la;qDr% o i`Fkdr% vkosndx.k dks izfrdj jkf''k 1]59]500@& :i;s ?,d yk[k mulB gtkj ikap lkS? dk Hkqxrku djsA

?2? mDr izfrdj dh jkf''k ds Hkqxrku vukosnd dzekad 3 chek dEiuh vkosndx.k dks djsxh] Hkqxrku ds i''pkr~ chek daiuh Hkqxrku ds i''pkr~ chek daiuh Hkqxrku dh xbZ izfrdj jkf''k dks vukosnd dzekad 2 jkeLo:i ls olwy djus dh vf/kdkjh gksxhA

?3? mDr izfrdj dh jkf''k ij vkosnu i= izLrqfr fnukad 16&6&05 ls Hkqxrku gksus ds frfFk rd lkr izfr''kr okf"kZd dh nj ls C;kt Hkh vnk fd;k tkosA

?4? Dyse vkosnu dk O;; vukosnd dzekad 1 o 2 ogu djsxsA

?5? vf/koDrk ''kqYd 500@& :i;s ?ikap lkS? fu;r dh tkrh gSA rnuqlkj O;; rkfydk cukbZ tkosA

Petitioners filed an execution proceeding before the Trial Court. In the meanwhile respondent No. 3 deposited the amount, as directed by the Claims Tribunal, in the Executing Court. The Executing Court vide impugned order ordered that until and unless the respondent No. 2 shall not furnish security of the amount of compensation, the amount be not paid to the petitioners.

Learned Counsel for the petitioners has submitted that the directions issued by the Executing Court are arbitrary, illegal and contrary to the award. The Executing Court has no jurisdiction to differ from the terms and conditions of the award passed by the Claims Tribunal. In support of his contentions, learned Counsel relied upon judgments in V. Ramaswami Ayyangar and Others Vs. T.N.V. Kailasa Thevar, and TCI Finance Ltd. v. Calcutta Medical Centre Ltd. and Anr. 2005 (6) Supreme 481. Contrary to this, learned Counsel for respondent No. 3 has submitted that the Executing Court has directed furnishing of security as per law and it has powers to issue such direction. In support of this contention learned Counsel relied upon the judgments of Hon''ble the Supreme Court in Sheikh Israj and Another Vs. Smt. Rekha and Others, ; National Insurance Co. Ltd. Vs. Kusum Rai and Others, and National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, .

Undisputed facts of the case are that the petitioners filed a claim application before the Claims Tribunal as per the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as ''the Act of 1988''). The learned Claims Tribunal passed an award and ordered for payment of compensation of Rs. 1,59,000/-. The directions issued by the Claims Tribunal has been reproduced above in verbatim which are in Hindi. The direction No. 2 of the Claims Tribunal is that respondent No. 3 shall pay the amount to the petitioners and thereafter it shall recover the same from respondent No. 2. There is no condition mentioned by the learned Claims Tribunal in the award that the amount of compensation be paid to the petitioners only if respondent No. 2, owner of the offending vehicle furnishes a security to the aforesaid amount before the Executing Court. It is also a fact that respondent No. 3 did not file any review application or further appeal against the award and directions issued by the Claims Tribunal have become final.

Section 147 of the Act of 1988 prescribes procedure with regard to recovery of amount from insurer as arrears of Land Revenue. The State Government has also framed Rules, named as "the Madhya Pradesh Motor Vehicles Rules, 1994" (hereinafter referred to as "the Rules of 1994") in exercise of powers conferred by Sections 28, 38, 65, 95, 96, 107, 111, 138, 159, 176, 211 and 213 of the Motor Vehicles Act, 1988 (No. 59 of 1988). Rule 240 thereof prescribes procedure to be followed by the Claims Tribunal in holding enquiries, which is as under:

240. Procedure to be followed by Claims Tribunal in holding enquiries.- Application of certain provisions of Code of Civil Procedure, 1908; save as otherwise expressly provided in the Act or these Rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rules 9 to 13 and 15 to 20, Order IX, Order XVIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.

Order XXI of the CPC prescribes procedure with regard to execution of decrees and orders. It is clear from the aforesaid provisions that the Executing Court while executing the award passed under the provisions of Motor Vehicles Act bound by the Provisions of Order XXI of the Code of Civil Procedure.

The Hon''ble Supreme Court in V. Ramaswami Aiyengar and Ors. v. T.N.V. Kailasa Thevar (supra), has held as under with regard to powers of the Executing Court:

(a) Civil P.C., 1908, Section 38. Powers of Executing Court.

The duty of an Executing Court is to give effect to the terms of the decree. It has no power to go beyond it terms. Though it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation.

The aforesaid principle has further been affirmed by Hon''ble the Supreme Court in Topanmal Chhotamal Vs. Kundomal Gangaram and Others, .

In Rameshwar Das Gupta Vs. State of U.P. and Another, , the Hon''ble Supreme Court held as under:

An Executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21, CPC. In view of the fact that it was a money claim, what was to be computed was the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the Court having decided the entitlement of the decree-holder, the Executing Court exceeded its jurisdiction in stepping out and granting a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution. The order of the executing was without jurisdiction and therefore, void.

Though the High Court normally exercises its revisional jurisdiction u/s 115, CPC but once it is held that the Executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, there was no illegality in the order passed by the High Court in interfering with the setting aside the order directing payment of interest.

It is true that in some judgments with regard to the Motor Vehicles Act cited by the learned Counsel for respondent No. 3, Hon''ble the Supreme Court has passed the observation that 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. The relevant direction is as under issued by the Hon''ble Supreme Court in National Insurance Co. Ltd. Vs. Kusum Rai and Others, .

16. In Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, , this Court opined:

(8) Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , that the insurer shall pay the quantum of compensation fixed by the Claims Tribunal, about which there was no dispute raised, to respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to 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 the law as to the manner in which the insured, 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 realisation by disposal of the securities to be furnished or from any other property or properties of the owner of vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.

However, the aforesaid directions have been issued by Hon''ble the Supreme Court on an appeal filed by the Insurance Company against the award passed by the Claims Tribunal and against the order passed by the High Court in appeal.

In the present case, the question before this Court is that whether the Executing Court has power to impose certain conditions which have not been mentioned in the award and decree. In the present case, the Executing Court has imposed a condition that the amount of compensation as awarded by the Claims Tribunal shall not be paid to the claimants-petitioners until and unless the owner of the offending vehicle shall not furnish a security before the Tribunal of the aforesaid amount. There is no such direction issued by the Claims Tribunal in the award. In my opinion, as per the principle of law laid down by Hon''ble the Supreme Court, quoted above, the Executive Court has no power to impose such conditions.

Consequently, the petition of the petitioners is disposed of with the following directions:

(1) That the order passed by the Executing Court, Annexure P-1, dated 12-2-2008 is hereby quashed upto the extent that the amount deposited by respondent No. 3 shall not be paid to the petitioners until and unless respondent No. 2, owner of the offending vehicle, shall not furnish security of the amount of compensation.

(2) It is hereby directed that the amount of compensation under the impugned award be paid to the petitioners-claimants as deposited by respondent No. 3 as per the award and the Executing Court may proceed further against respondent No. 2, the owner of the offending vehicle, as per law.

(3) No order as to cost.

