
(2010) 12 AHC CK 0039
In the Allahabad High Court
Case No : Writ Petition No. 51208 of 2009

Ram Keerat Sharma

APPELLANT

Vs

Asha Devi and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(7), 168, 168(3), 174

Citation : (2011) 3 ADJ 180

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Petitioner has approached this Court for quashing of the order passed by Motor Accident Claims Tribunal dated 29.04.2009 wherein application moved on behalf of the Petitioner has been rejected.

2. Brief background of the case is that an accident took place qua the truck No. U.P. 78N/3831 on 25.08.2001. In the said accident claimant Murari Lal has received injury and said Murari Lal filed Motor Accident Claim Petition No. 26 of 2002 and same has been allowed on 19.01.2005. In the said claim petition awarded amount is Rs. 3,00,000/-alongwith interest. In the body of the award dated 29.01.2005 categorical finding has been returned that amount in question would be paid by the Insurance Company and thereafter Insurance Company would be free to recover the said amount from the owner of the vehicle in question. This is accepted position that Insurance Company pursuant to award in question has paid entire awarded amount to the claimant, thereafter has proceeded to recover the said amount as per liberty accorded for recovering of the said amount from the owner of the vehicle in question. Insurance Company after making payment moved an application for recovery of the amount from the owner of the vehicle and on the same notice has been issued and same was returned back with endorsement that notice has been refused to be accepted on 05.05.2006 and thereafter order was passed by Motor Accident Claims Tribunal

for seizure of the vehicle in question. Petitioner claims that he has purchased the vehicle in question during the pendency of the proceeding in question and vehicle in question as of now stands transferred in his name and after the order of seizure of the vehicle in question has been passed for seizing of the vehicle in question, he moved an application for recall of the order dated 05.05.2006. Said application has been considered and the has been rejected being not maintainable. At this juncture present writ petition in question has been filed.

3. Notice has been sent to each one of the Respondents by R.P.A.D. on 21.10.2009 and Office submitted its report in this regard on 15.12.2009. Thereafter this Court again on 18.11.2010 directed the office to submit fresh report and thereafter fresh report has been submitted on 23.11.2010 that notice sent to opposite party No. 1, has returned back unserved with remark "not delivered" and in respect of opposite parties No. 2 to 4, neither undelivered cover nor acknowledged have returned back after service. Keeping in view such report and as notices have been sent at correct address, as such service on these Respondents has been is presumed to be sufficient under Chapter VIII Rule 12 of High Court Rules and thereafter matter has been taken up for final hearing and disposal.

4. Sri A.C. Pandey, learned Counsel for the Petitioner contended with vehemence that in the present case liberty was given to the insurance company for recovering of the amount from the owner of the vehicle in question, and once owner of the vehicle has ceased to be the owner of the vehicle in question which met with an accident as such vehicle in question could not have been seized as has been done in the present case and the request of the Petitioner ought to have been considered while passing order dated 05.05.2006 as he was bonafide purchaser for value and has nothing to do with the accident in question, in such a situation and in this background Motor Accident Claim Tribunal has wrongly rejected the application as such writ petition deserves to be allowed with the direction to decide the application moved on behalf of the Petitioner.

5. After respective arguments have been advanced factual position which is emerging in the present case that truck in question has been claimed to be purchased by the Petitioner based on agreement deed dated 25.01.2005 and award in question has been passed by Motor Accident Claim Tribunal on on 29.01.2009. In the said award in question it is clearly mentioned that insurance company should indemnify the claimant and thereafter insurance company would be free to recover the said amount from owner of the vehicle. Insurance company accordingly after making payment, initiated execution proceeding and in the said proceeding so undertaken the owner of the vehicle has refused to accept notice thus prompting the insurance company to get order of attachment passed.

6. At this juncture the view point of Hon"ble Apex Court in the case of Oriental Insurance Company Limited v. Nanjappan 2004 TLS 39053 decided on 13.02.2004 (Civil 1012 of 2004) is being looked into wherein Court has held as

follows :

The view of the High Court cannot be maintained in view of what has been stated in Asha Rani's case (supra) and Devireddy's case (supra). To that extent the judgment of the High Court is unsustainable. At the same time, the observations of this Court in Baljit Kaur's case (supra) also need to be noted. In para 21 of the judgment, it was observed as follows :

The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the Appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the 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. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding.

Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the 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 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 realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.

7. It is pursuant to this judgment that purported action has been taken, as therein it has been mentioned that 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 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 realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

8. In the present case vehicle in question which was subject matter of accident qua the same Petitioner claims that he is bonafide purchaser and further claims that it was clearly mentioned in the agreement that liability, if any will fall with the owner of the vehicle qua accident prior to 25.01.2005 and not with the Petitioner. Petitioner submits that once truck in question does not belong to owner of the vehicle any more then in such a situation and in this background objection moved on behalf of Petitioner ought to have been considered and Executing court could have recovered the said amount from any other property or properties of the owner of the vehicle.

9. Petitioner has also placed reliance on the judgment in the case of Oriental Insurance Co. v. Zaharulinsha and Ors. reported in AIR 2008 SCW 3251 wherein view has been taken that amount in question can also be recovered as arrears of land revenue as held as follows :

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner u/s 174 of the Act as arrears of the land revenue . The certificate will be issued for the recovery as arrears of land revenue only, if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

10. Recovery has to be made from the property belonging to the owner of the

vehicle in question and as here Petitioner has been contending that owner of the vehicle has parted with ownership and possession of the vehicle in question after getting payment then, in such a situation and in this background application moved on behalf of the Petitioner for consideration of the objection qua the order of attachment ought to have been considered by the Motor Accident Claims Tribunal in stead of proceedings to reject the same as has been done in the present case. Further every court/tribunal has got inherent power to rectify mistake committed provided mistake has been committed. Here Petitioner's contention has been that patent mistake has been committed, as owner of the vehicle in question, has ceased to be owner of the vehicle and now he is the owner. In such a situation then claim of the Petitioner ought to have been examined after providing opportunity and examining as to whether said transaction is bonafide one or same is only to bailout the owner of the vehicle and is a mere pretence.

11. Consequently order dated 29.04.2009 passed by Motor Accident Claims Tribunal is hereby quashed and set aside. Motor Accident Claims Tribunal is directed to decide the application in accordance with law preferably within three months from the date of presentation of certified copy of this order.

12. Writ petitioner is allowed.