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**(2006) 01 RAJ CK 0046**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 9419 of 2005**

Shanti Devi (Smt.) and Others

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

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**Date of Decision :** 12-01-2006

**Acts Referred:**

**Citation :** (2006) 1 ACC 692 : (2006) 1 RLW 875 : (2006) 1 WLC 553

**Hon'ble Judges :** K.S. Rathore, J

**Bench :** Single Bench

**Advocate :** Amit Nath Mathur, for the Appellant; Vinod Tyagi, for the Respondent

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## **Judgement**

K.S. Rathore, J.—This writ petition is filed by the petitioners against the order dated 1.9.2005 passed by the Additional District & Sessions Judge (Fast Track) No. 4, Ajmer in application No. 80/2000. The petitioner by way of this writ petition further seeks direction directing the respondents to disburse the amount in the terms indicated in the award dated 6.4.2005.

2. Vide impugned order dated 1.9.2005, the Claims Tribunal directed that owner of the vehicle should furnish the security and after taking security from the owner of the vehicle involved in the accident, the amount of the award can only be disbursed. The Claims Tribunal while passing the said order, also considered the judgments rendered by Hon'ble Supreme Court in case of Pramod Kumar Agarwal and Ors. v. Mushtari Begum and Ors. reported in 2004 (3) TAC 289 and Oriental Insurance Co. Ltd. v. Najpann and Ors. reported in 2004 (2) TAC 12.

3. Learned Counsel for the petitioners placed reliance on the judgment rendered by this Court in the case of Banwari Lal v. Gopi Ram reported in 2005 (2) DNJ 781 wherein this Court has held that condition imposed that insurance company will pay the amount when owner furnishes a surety to pay the amount to insurance company. It amounts to denial of compensation. It was also observed that the only grievance made by the learned Counsel for the claimant-appellant against the award impugned in this appeal is that though the learned Tribunal

has held that the Insurance Company is statutorily liable to pay the compensation to the claimant-appellant i.e., third party, but at the same time committed an error in imposing a condition on payment thereof that the Insurance Company shall pay the compensation to the claimant-appellant only when the respondent No. 1, the owner of the truck, furnishes a surety that he will pay the amount of compensation paid by the Insurance Company to the claimant- appellant to the Insurance Company.

4. Learned-counsel for the respondent submits that while considering the case of Banwari Lal, this Court has not considered the judgment rendered by Hon''ble Supreme Court in case of National Insurance Co. Ltd. Vs. Baljit Kaur and Others, wherein the Hon''ble Supreme Court has held that instead and in place of insurer the owner of the vehicle shall be liable to satisfy the decree. The interest of justice will be subserved 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 the 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.

5. The Hon''ble Supreme Court placing reliance on the judgment in case of Baljit Kaur (supra) again reiterated this fact in the case of Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, that before release of the amount to the claimants, owner of the 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 Regional Transport Authority concerned. 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 realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle.

6. The same view has been expressed by the Hon''ble Supreme Court in case of Oriental Insurance Co. Ltd. v. Shri Nanjappan and Ors. reported in 2004 (2) TAC 12. The Hon''ble Supreme Court while setting aside the judgment of the High Court directed that in terms of what has been stated in Baljit Kaur's case that the insurer shall pay the quantum of compensation fixed by Tribunal, about which there was no dispute raised to the respondents- claimant 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.

7. Heard rival submissions advanced on behalf of the respective parties and carefully gone through the judgments rendered by Hon''ble Supreme Court,

8. This Court in the case of Banwari Lal (supra) has held that imposition of condition to furnish the security is virtually a denial of compensation amount to the claimant whereas the Hon''ble Supreme Court has observed in the case of Baljit Kaur (supra) that owner of the vehicle shall be liable to satisfy the decree. Time and again, Hon''ble Supreme Court in case of Pramod Kumar (supra) and National Insurance Co. Ltd. (supra) categorically observed that before releasing the amount of compensation, owner of the vehicle shall be issued a notice and he shall be required to furnish a security of the entire amount which the insurer will pay to the claimants. It was also observed that vehicle involved in the accident shall be attached as a part of the security.

9. The ratio decided by Hon''ble Supreme Court does not indicate that this condition is simply denial of amount of compensation to the claimant, but the condition which is imposed either to ask for security or to attach the vehicle involved in the accident as a part of the security to insurer, for the amount which is to be paid by the insurance company to the claimants.

10. I am agree with the submissions made on behalf of the petitioner that owner of the vehicle can avoid the proceedings and cause delay in furnishing the security as required, on account of which the claimants will be the only sufferers as the dispute is between the insurance company and the owner of the vehicle.

11. In view of the aforesaid discussion, the Claims Tribunal is directed to Issue the notice to the owner of the vehicle and shall attach the vehicle Involved in the accident as a part of the security Immediately after this formality, the Claims Tribunal shall disburse the amount of compensation to the claimants forthwith.

12. The impugned order dated 1.9.2005 is hereby quashed and set aside. The writ petition is partly allowed.