(2007) 10 AHC CK 0003

In the Allahabad High Court

Smt. Sheela Devi and Others APPELLANT

Vs

Additional District Judge, National Insurance Company Ltd. RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2008) 1 AWC 87 : (2008) 4 RCR(Civil) 372

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri Hari Pratap Gupta, learned Counsel for the petitioners and Sri A.C. Nigam learned Counsel appearing for respondent No. 2. Notices were issued to respondents No. 2, 3 and 4 by registered post on 26th March, 2007. Although respondent No. 2 has put in appearance but respondents No. 3 and 4 have not appeared.

2. By this writ petition, the petitioners have prayed for quashing the order dated 12th January, 2007 passed by Motor Accident Claims Tribunal rejecting the application of the petitioners for release of the compensation amount as awarded by Motor Accident Claims Tribunal in Case No. 582 of 2004 Smt. Sheela Devi and Ors. v. Rajesh Kumar Gupta and Ors. decided on 23rd March, 2006.

3. Brief facts of the case for deciding the issue raised in the writ petition are; a claim petition being Claim Petition No. 582 of 2004 was filed by the petitioners before the Motor Accident Claims Tribunal claiming compensation on account of death of husband of petitioner No. 1, late Heera Lal Chaudhary. The claim petition was allowed by award dated 23rd March, 2006 awarding total amount of Rs. 4,65,541/-. The insurance company deposited the total amount on 10th July. 2006 by cheque before the Motor Accident Claims Tribunal. The petitioners, who are claimants, moved an application for release of the amount by application dated 20th July, 2006. The insurance company filed objection against release of

the amount to the effect that without furnishing security by vehicle owner, the awarded amount could not be released in favour of the petitioners. Learned Additional District Judge by the impugned order dated 12th January, 2007 accepted the objection of the insurance company and rejected the application of the petitioners. Against the order of the Motor Accident Claims Tribunal, present writ petition has been filed.

4. Learned Counsel for the petitioners, challenging the order, contended that the fact that owner has not appeared or filed security on the application of insurance company for recovering the amount from owner cannot come in the way of the petitioners from payment of the compensation amount. Learned Counsel for the petitioner submits that it is open for the insurance company to take steps for recovery of the amount from owner and obtain security but the payment of the amount to the petitioners cannot be refused. Reliance has been placed by counsel for the petitioners on judgment of the Apex Court reported in Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, and judgments of this Court reported in 2006(3) Transport and Accidents Cases 118 Oriental Insurance Co. Ltd. Farrukhabad v. Motor Accidents Claims Tribunal, Farrukhabad and Ors. and 2007(1) Transport and Accidents Case 20 Smt. Bhuri and Ors. v. Smt. Shobha Rani and Ors.

5. Sri A.C. Nigam, learned Counsel appearing for respondent No. 2, contended that in view judgment of the Apex Court in 2004(1) Transport and Accident Cases 366 National Insurance Co. Limited v. Baljit Kaur and Ors. and judgment of the Apex Court in Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, the amount can be released only when owner furnishes security for the entire amount, which is to be paid to the petitioners-claimants.

6. I have considered the submissions and perused the record.

There is no dispute between the parties regarding facts of the present cabs. Apex Court in Oriental Insurance Co. Ltd. v. Nanjappan and Ors. while considering the provisions of Section 149 of the Motor Vehicle Act laid down following in paragraph 8:

8. 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 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 realisation 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. The Apex Court observed in the said judgment that before release of the amount 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. In Pramod Kumar Agrawal''s case (supra) the Apex Court after noticing the Baljit Kaur''s case again made similar observations in paragraph 12, which are to the following effect:

12. Therefore, while upholding the judgment of the High Court we direct in terms of what has been stated in Baljit Kuar case that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the owner the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned 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 claimants, the owner of the vehicle i.e. Appellant 1 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 i.e. Appellant 1 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, the insured (Appellant 1).

8. There cannot be any dispute that before release of the amount to the; claimants if an application is filed by the insurance company for recovery bf the amount from the owner a notice has to be issued and all possible steps are to be taken including attachment of vehicle so that insurance company can recover the amount, but the issue raised in this case is that if the owner does not appear or furnish the security can the claim be denied the amount awarded and can the payment be dependent on the owner appearance and furnishing security. The two judgments relied by counsel for the petitioners in Oriental Insurance Co. Ltd., Farrukhabad v. Motor Accidents Claims Tribunal, Farrukhabad and Ors. (supra) and Smt. Bhuri and ors. (supra) have considered the above issue and following was laid down in paragraph 5 of the judgment in Smt Bhuri''s case:

5. ...Thus, what is the crux of the matter in the present case is that the revisionists-claimants cannot be made to suffer even if the insured/owner of the vehicle does not furnish security or does not appear before the Court in pursuance to the notice issued to him. The burden of recovering the amount within the provisions of the Act itself has been placed upon the insurer in the aforesaid judgments of the Apex Court. The claimants who have obtained the award in their favour have not been made to suffer through any observation made by the Supreme Court in these cases. Thus, in the aforesaid view of the matter, what I fill that it would be just and proper if the Court below is directed to first take resort to the issuance of notice to the insured/owner of the vehicle and thereafter only the money under deposit before the Court should be released in. favour of the claimants.

This Court has taken the view in Smt Bhuri''s case that claimant cannot be made to suffer if owner of the vehicle does not furnish Security and does not appear before the Court. In the present case the order impugned itself notices that notices were issued to the owner. The order impugned was passed on 12th January, 2007 and about 10 months'' have elapsed from passing of the said order. The judgment of the Apex Court in Oriental Insurance Co. Ltd. v. Nanjappan and Ors. (supra) did not lay down that payment to the claimant cannot be made unless the owner appears and furnishes security. The Apex Court observed that owner will be issued notice and asked to give security. That procedure is to be adopted by the insurance company by instituting a suit for recovery. The judgment of the learned Single Judge of this Court in Oriental Insurance Co. Ltd., Farrukhabad v. Motor Accidents Claims Tribunal, Farrukhabad and Ors. (supra) and Smt. Bhuri and Ors. (supra) fully supports the contentions of the learned Counsel for the petitioners.

9. In the present case notices to the owner has also been issued on the application of the insurance company and it is for the Motor Accident Claims Tribunal to proceed with the said application of the insurance company and take all steps including attachment of the vehicle and asking the owner to submit security but that cannot be a ground for denying the payment of awarded amount to the claimants.

10. In the present case, the claim was awarded on 23rd March, 2006, i.e., about one and half year have passed and in the accident husband of petitioner No.1, who was the sole bread owner died on 17th August, 2004 died. The non payment of the compensation amount to the petitioners; in facts of the present case cannot be justified. The order impugned dated 12th January, 2007 is set-aside. The Motor Accident Claims Tribunal is directed to release the amount to the claimants-petitioners. However, the application of the insurance company, respondent No. 2, for recovery against owner may be proceeded in accordance with law. The writ petition is allowed accordingly.

