
(2006) 08 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 7999 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

Sri. Nazeer Ahmed and Another

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2006) 4 KCCR 2559 : (2007) 5 RCR(Civil) 33

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; Sree Vidya, for T.N. Viswanatha, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Writ petition is by an Insurance Company, who was a party to a claim application before the Motor Accidents Claims Tribunal on the file of Court of Small Causes, Bangalore City.

2. The Claim application of an injured in the accident involving a motor vehicle covered by a policy issued by the Petitioner-Insurance Company came to be allowed in terms of the award dated 18-5-2005 passed in MVC 4527/2005.

3. It appears the Petitioner-company had taken the defence that the insurance company was not liable to indemnify the owner of the vehicle as the owner who had taken out the policy had committed certain breaches of the conditions of the policy.

4. Be that as it may, the Tribunal observing that in terms of the decision of the Supreme Court it was open to the Insurance Company to recover the amount from the owner as indicated in the judgment of the Supreme Court and proceeded to pass the award.

5. The claimants proceeded to execution of the award by filing Execution Petition

No. 390/06. It is this execution proceedings it appears the Petitioner-Insurance Company filed I. As. I and II praying for staying the release of the award amount to the Petitioner in the claim petition, which had been deposited by it till the owner of the vehicle i.e. judgment debtor furnishes security for the recovery of the amount by the Insurance Company from such owner as the Insurance Company was entitled to recover such amount from the owner in terms of the decision of the Supreme Court in the case of Oriental Insurance Co. Ltd. v. Nanjappan and Ors. reported in (ILR 2004 KAR 2409).

6. The application before the Executing Court was opposed by the claimant-judgment debtor. It was contended that execution of the award amount cannot be stalled at the instance of the Petitioner - Insurance Company for the purpose of passing certain orders on the application filed by the Petitioner as it was a matter inter se between the Petitioner - Insurance Company and the owner of the vehicle. In the light of such version the Executing Court found it proper and rejected the applications for staying the release of the award amount and to direct the owner to provide security to the Insurance Company to its satisfaction in respect of the amount of award observing as under:

8. The Counsel for the 1st Petitioner (Dhr) mainly relying on the decision of the Hon"ble Supreme Court referred above, it is argued that for the purpose recovering the amount from the insured, the insurer shall not be required to file proceeding, it may required to file recovery proceedings against the insured, before the concerned Executing Court. In case of default it is open to the Executing Court to direct realization by disposal of securities to be furnished or from other property or properties of owner of the vehicle, the insured. Nowhere in the judgment of the Hon"ble Supreme Court, it is stated that the amount deposited shall not be paid to the claimant if insured failed to furnish securities for the satisfaction of the amount, due to the insurer. Moreover, executing Court cannot go behind the decree. In the decree, it is stated that right of liberty to recovery given to first Respondent after depositing the amount as per the award and no decree was passed against claimant-Respondent. More over the scope of Section 147 was not brought to the notice of Hon"ble Supreme Court in the decision referred above with due respect to the decision above said decision not applicable to the facts of this case. So, this petition is filed against wrong person and there was no decree against claimant. Hence I answer point for consideration in the negatively. Accordingly, I pass the following:

ORDER

I.A. No. 1 filed u/s 151 of Code of Civil Procedure, to stay the release of the award amount is rejected and I.A. No. 2 filed u/s 151 CPC to vacate the stay order dated 27-3-2006 by Respondent is allowed. However, if the amount released, the purpose of this petition will be defeated. So, in the interest of justice, Petitioner (1st Respondent in MVC. No. 4527/03) to enable it to prepare appeal against this order, this order of vacating stay come in to force one month onwards from today.

7. The Tribunal dealt with this contention observing that a violation of the terms and conditions is an inter se matter between the Insurance Company and the owner of the vehicle; that as on the date of the accident the vehicle in question was covered by a policy issued by the Insurance Company as it is bound to satisfy the award by paying the compensation awarded to the claimant-Petitioner and can later recover the same from the registered owner of the vehicle. Accordingly the Tribunal allowed the claim petition and awarded amount of Rs. 1,52,900/- with interest @ 6% etc. Thereafter it appears the Insurance Company had deposited the award amount with interest before the Tribunal. It is before the disbursement of the amount by the Tribunal to the claimant-Petitioner, the Insurance Company came with application I.A.I filed u/s 151 of CPC praying for stay of the disbursement of the amount and that unless the owner of the vehicle furnishes security in favour of the Insurance Company for the awarded amount the deposited amount should not be disbursed in favour of the claimant-Petitioner and if the amount is disbursed even otherwise it will be difficult for the Insurance Company to recover the amount from the owner of the vehicle.

8. The Tribunal had stayed the disbursement of the award amount and as the Petitioner/claimant before the Tribunal was left high and dry notwithstanding the award in his favour filed I.A.II praying for vacating the interim order, inter alia, contending that the insurance company has not filed any execution proceedings; that there was no need to entertain the application of the Insurance Company terming it as an I.A filed in the execution proceedings; that once the award was passed on the amount that had been deposited by the Insurance Company before the Tribunal, there was nothing else for the Tribunal except to disburse the amount; that creating impediments/hurdles in the disbursement of the award amount in favour of the claimant-Petitioner by the Insurance Company cannot be encouraged; that it is virtually stalling satisfaction of the award and that it should be rejected.

9. It is in the light of such rival contentions the Tribunal found it fit to reject the application as stated supra.

10. It is aggrieved by this order passed by the Tribunal, the present writ petition by the Insurance Company.

11. Submission of Sri. Seetharama Rao, learned Counsel for the Petitioner is that the right of the Insurance Company to recover the amount is in terms of the judgment of the Supreme Court reported in the case of Oriental Insurance Co. Ltd. v. Nanjappan and Ors. reported in (ILR 2004 KAR 2409). Learned Counsel submits that the question of liability of the Insurance Company in such situation had been relegated to the background pending determination and the Supreme Court had directed that the Insurance Company should first satisfy the amount and later recover the amount from the owner of the vehicle, who if had committed any breach etc.

12. In this context it is also submitted by Sri. Seetharama Rao, learned Counsel

for the Petitioner, that the Tribunal can ensure to provide safeguard to the Insurance Company for recovery by insurer i.e., the owner of the vehicle if provides security.

13. Submission of Sri. Seetharama Rao, learned Counsel placing reliance on paragraph 8 of the decision of the Supreme Court in the case of Oriental Insurance Co. Ltd. v. Nanjappan referred to supra which reads as under:

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. v. Baljit Kaur and Ors. (2004 AIR SCW 212) 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 that 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.

is that it was not open to the Tribunal to have rejected the application without ensuring to safeguard the interest of the Petitioner-Insurance Company; that the amount could have been released only after the owner of the vehicle had furnished security amount in favour of the Insurance Company before the Tribunal; that the Insurance Company could agitate the matter before the very tribunal instead of filing a separate suit for such purpose as observed by the Supreme Court and it was the duty of the Executing Court to pass appropriate orders in accordance with law and the Tribunal should not have rejected the application for stay etc.

14. I have perused the order of the Tribunal and the judgment of the Supreme Court.

15. Heard Sri. Seetharama Rao, learned Counsel for the Petitioner and Smt. Srividya, learned Counsel for the caveator - Respondent No. 1, the claimant before the Tribunal having entered caveat through Counsel.

16. It appears even before the Tribunal, the owner of the vehicle during the pendency of the claim petition had not appeared and had not been represented

by Counsel. It was only the Insurance Company, which had contested the claim petition.

17. The Insurance Company had deposited the amount after passing of the award. The Insurance Company had filed I.A.I for stay of release of the awarded amount pending furnishing of security by the owner of the vehicle. The owner was not before the Tribunal either earlier or then. If the owner had not appeared and contested the claim, and the Insurance Company had not even called upon the owner to make good its amount, it is not the function of the Tribunal to ensure that in favour of the Petitioner-Insurance Company. It is conceded by Sri. Seetharama Rao, learned Counsel for the petitioner, that even a copy of the application filed before the Tribunal had not been served on the owner of the vehicle. In a situation of this nature when the owner of vehicle had not been called upon to reimburse the amount to the Insurance Company and had not even been put on notice about such requirement and when application for stay had not been brought to its notice it can only amount that the application is one in the nature for stalling the release of the amount in favour of the petitioner-Insurance Company. In a situation of this nature the application has been rightly rejected by the Tribunal.

18. Moreover, the award passed by the Tribunal in terms of the judgment and award dated 18-5-2005, was one fastening the liability jointly on the owner of the vehicle, the insured and the Petitioner - Insurance Company, the insurer. If the Petitioner - Insurance Company seeks to get over such an award even assuming on the basis of law as has developed and declared by the Supreme Court in *New India Assurance Co. Ltd. v. Asha Rani* (2000 AIR SCW 5259 and followed in *Oriental Insurance Co. Ltd. v. Devireddy Kaonda Reddy* 2003 AIR SCW 513 it can only by questioning the judgment and award by filing an appeal and not by bringing this development of law to the notice of the Executing Court and by requesting the Executing Court to apply the law as in the case of *Nanjappan* (supra). In fact there is no further law declared in *Nanjappan's* case but only certain directions issued in the light of the particular facts of the case, while determining the liability or otherwise of the Insurance Company by applying the law as had been laid down in *Asha Rani's* case, it should be borne in mind the arrangement/directions issued by the Supreme Court in *Nanjappan's* case was in an appeal by the Insurance Company disputing its liability. Such liability cannot be got over in the execution proceedings but can only by initiating appropriate proceedings for getting over the award of the Tribunal fixing joint liability.

19. In my opinion, though the learned Counsel for the Petitioner - Insurance Company seeks to draw my attention to certain observations made by the Tribunal and it is found that it was not for the Tribunal to have made such unwarranted impertinent observations, that in itself does not detract from the order of rejecting the application, which I find has not only been rightly rejected, but the application itself was one which was frivolous and cantankerous in nature

for stalling the satisfaction of the award and at any rate to deny the claimant the award amount which had been determined by the Tribunal. The conduct of the Petitioner - Insurance Company is most reprehensible to say the least. I do not find any bona fides in the Insurance Company filing such an application. I do not find any infirmity for the Tribunal rejecting the application.

20. Accordingly this writ petition is dismissed, levying costs of Rs. 5,000/- on the Petitioner - Insurance Company in favour of the 1st Respondent. Petitioner - Insurance Company to deposit the amount of costs within four weeks before this Court which the 1st Respondent can withdraw. On an application filed by the 1st Respondent registry to issue a decree which can be executed as a decree of the Civil Court.

14-9-2006

ORDERS ON FOR BEING SPOKEN TO

This writ petition was dismissed in terms of the order dated 31.08.06.

Before signing the order as I noticed that the decision of the Supreme Court on which considerable reliance had been placed by Sri. Seetharam, learned Counsel for the Petitioner in the case of Oriental Insurance Co. v. Nanjappan and Ors. (ILR 2004 Kant 2409), did not lay down any fresh law in favour of the Petitioner Insurance Company for the purpose of exonerating the liability of the Insurance Company, the matter was directed to be listed For Being Spoken to, to hear further in the matter. Accordingly, the matter had been listed on 12.09.2006 and at the request of the Counsel, it has been adjourned to 14.09.2006 and taken up for further hearing today.

I have heard Sri.B.C. Seetharama Rao, learned Counsel for the Petitioner and also Smt. Srividya, learned Counsel for the Respondent.

Even after hearing the learned Counsel for the Petitioner and detailed perusal of the judgment of the Supreme Court in Nanjappan's Case and in Baljit Kaur's case which was quoted and followed in Nanjappan's case, my understanding of the matter is that in view of the changed position of law in Asha Rani's case and Devireddy Kondareddy's case and when the Supreme Court was exonerating the insurance company of its liability in the light of the changed law at variance with the law laid down in the case of New India Assurance Co. Ltd. v. Satpal Singh and Ors. 1999 AIR SCW 4337, the Supreme Court thought it fit to work out a practical way to ensure that the victim who was the claimant before the Tribunal did not suffer further directed the Insurance Company to deposit the amount though its liability had been exonerated, but at the same time leaving a gate open to the insurance company to recover that amount from the owner insured who alone was liable to satisfy the claim, even by permitting the Insurance Company to initiate proceedings before the very executing Court or the Tribunal for recovery of the amount paid by the insurance company on behalf of the owner of the vehicle who alone was really liable to pay the compensation amount

to the claimant.

In that view of the matter if a decision or award of the Tribunal is at variance by the law laid down by the Supreme Court, the proper way for getting over the same and if the Tribunal had wrongly fixed the liability on the Insurance Company also, the proper way to get out of such a situation is to pursue the matter before the appropriate forum and have the wrong fixation of liability, corrected.

It is not necessary for me to go further into the aspect of the manner of recovery by the Insurance Company against the owner in this writ petition. But suffice to say that in such inter dispute or rivalry between the insured and insurer, the claimant/victim should not suffer further. In such a situation if the Insurance Company should have made an application for stay of withdrawal of the amount as determined by the Tribunal and as deposited by the Insurance Company; that it is only a situation where the agony of the claimant continues and there is no reason as to why the claimant should be made to suffer further pending resolution of the inter dispute between the insured and insurer.

Though the learned Counsel for the Petitioner submitted that it is only during the interregnum and to safeguard the interest of the Insurance Company till owner of the vehicle furnishes security, the release of the award amount being made contingent on the owner furnishing security or otherwise for the recovery of the amount by the Insurance Company is definitely a retrograde step resulting in further harassment to the claimant. Such a development cannot be permitted by the Court or the Tribunal.

In this regard the learned Counsel for the Petitioner has clarified that the observation in para 5 at page 3 of the order dated 31.08.2006, the claimant had not filed any execution proceedings, but the registry of the Tribunal had given such number and caption to the application filed by the Insurance Company as execution case.

It is also submitted by the learned Counsels for the Petitioner and Respondent that Insurance Company infact subsequently deposited the amount and claimant has also withdrawn the amount. In this view of the matter the learned Counsel for the Petitioner submits that the matter has virtually become infructuous and therefore, Counsel would not like to make further submissions either on merits or on the legal position that is said to have been declared in Baljit Kaur's case and said to have been reiterated in Nanjappan's case, but would like to canvass the same in future in an appropriate case as and when it arises later.

In the circumstances the observation made in para 5 at page 3 of the order should read as "in the application filed by the Petitioner/insurance company" and not "in the execution proceedings instituted by the claimant".

Learned Counsel for the Petitioner has made a plea that the cost awarded at Rs. 5000/- is not warranted at any rate and is on the higher side. Learned Counsel

for the Respondent submitted that it is justified and if at all it can be reduced to a small extent.

In the over all situation, I am of the view that a nominal cost of Rs. 2000/- should be retained as against Rs. 5000/- levied in terms of the order dated 31.08.2006.

The order dated 31.08.2006 stands modified in terms of this order and this forms part of the order and in continuation of that order. Ordered accordingly.