(2012) 06 SHI CK 0088

In the High Court Of Himachal Pradesh

Case No : C. Review No. 76 of 2008

The New India Assurance Company APPELLANT

Vs

Smt. Ganeshu Devi and Others RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Citation : (2012) 06 SHI CK 0088

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : B.M. Chauhan, both in, for the Appellant; Romesh Verma, Advocate For respondents 1to 5, 7 and Mr. Rahul Mahajan both in, Advocate, for the Respondent

Judgement

Dev Darshan Sud, J.—Both these petitions are taken up for decision together. In review petition, prayer made by the petitioner is for review of the judgment of this Court dated 2nd December, 2005 passed in appeal preferred by the Insurance Company against the award of the learned Motor Accident Claims Tribunal. Insurance Company was held liable to compensate the dependants of the deceased Chuni Lal Kapila, who had died in a motor accident in the year 1997. The Insurance Company challenged its liability. The appeal was accepted and it was directed that: In view of the law laid down by the Hon''ble Supreme Court in the above mentioned authorities, the present appeal is allowed, award dated 18.1.1997 passed by the Tribunal is modified and it is held that the appellant Insurance Company shall not be liable to pay compensation amount to the claimants. However, in view of the law laid down by the Hon''ble Supreme Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , it is directed that initially the appellant Insurance Company would be liable to pay the award amount to the claimants. If not already paid, and thereafter would be entitled to recover the same from the owner of the vehicle in question by initiating proceedings before the Executing Court in this behalf. No costs.

Pursuant thereto, the Insurance Company preferred execution proceedings before the learned Motor Accident Claims Tribunal where an objection was taken to the execution on the ground that the judgment passed was a nullity as the award was passed on 18.1.1997 and the appeal (FAO. No. 131 of 1997 subject matter of the review) was disposed of by the Court on 2.12.2005. Harjinder Singh to whom the liability was fastened by the Court, had died on 5.11.2004. The effect of such death was that the judgment had been passed/rendered against dead person and in this eventuality, no execution proceedings could be taken up. What I find from the record is that the owner was not represented in this Court whereas the claimants were represented. The legal heirs now seek to take advantage of a technicality to avoid liability which was otherwise that of the owner as held by this Court. I find from the record that before the learned Tribunal, Harjinder Singh, who was second respondent, was served but he failed to put in appearance and was proceeded ex parte. Subsequent thereto also, no appearance was put in on his behalf. In appeal also in this Court, he did not appear despite service. The report of the Registry dated 25.9.1997 in appeal clearly records that Mr.J.S.Bagga, Advocate has filed his Power of Attorney on behalf of respondent No. 8. This fact itself is recorded in the order of the Court on 29.10.1997 which reads: Respondent No. 8 is represented by Mr.J.S.Bagga, learned counsel. The appellant shall file fresh process fee and correct address with registered A.D. Cover for the service of respondent No. 9 within two weeks and thereafter Registry shall take further steps.

2. I do not find from the judgment any representation on behalf of respondent No. 8 (deceased Harjinder Singh). No information having been given to this Court regarding the death of Sh.Harjinder Singh, his legal representative now seeks a technicality to avoid liability. This Court is not powerless in dealing with this kind of dubious practices. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, , the Supreme Court holds:

2. Fraud and justice never dwell together.(Fraus et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything (Lazarus Estate Ltd. Vs. Beasley 1956(1) QB 702.)

3. For a High Court in India to say that it has no power even to consider the contention that the awards secured are the by products of stark fraud played on a Tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and peoples faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the plea and found them unsustainable on merits, if they are meritless. But when the Courts pre- empted the Insurance Company by slamming the doors against them, this Court has to step in and salvage the situation.

(Pp.1033&1034)

3. This proposition is now well settled and reiterated in a number of decisions holding that the Court is not powerless to deal with the situation. (See: Branch Manager, United India Insurance Co. Ltd. vs. Chandrashekara and another 2007 ACJ 488, United India Insurance Co. Ltd. Vs. Pawan Tikkiwal and Others, National Insurance Co. Ltd. vs. Gaisuddin Khan and another 2007 ACJ 1140, New India Assurance Co. Ltd. vs. Raj Kumar and others 2010 ACJ 2535 and United India Insurance Company Limited Vs. Gaviyappa and Others,

4. In these circumstances, I do not find the order of the learned Executing Court to be in consonance with law. Having not informed the Court about the death of the deceased, having not contested the petition before the Tribunal as also the appeal in this Court, the legal heirs cannot march over equity and avoid liability. In these circumstances both these petitions are disposed of with the direction that the judgment passed in appeal in which review is sought will be treated as one having been passed to bind the estate of the deceased Harjinder Singh. The Execution Petition is directed to be restored to its original number and shall be proceeded in accordance with law. All miscellaneous applications are also disposed of.

