(2014) 10 DEL CK 0031

In the Delhi High Court

Case No : EX.F.A. 22/2014 and CM No. 14157/2014 (stay)

The New India Assurance Company Limited — APPELLANT

Vs

Kumari — RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 149(2), 170

Citation : (2014) 10 DEL CK 0031

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Salil Paul and Sahil Paul, Advocate for the Appellant; Rohit Chauhan, B.B. Solanki and Maneesh Gumber, Advocate for the Respondent

Judgement

Jayant Nath, J.—The present appeal is filed by the appellant Insurance Company seeking to impugn the order dated 28.04.2014. By the said impugned order the appellant Insurance Company has been directed to deposit the award amount within two weeks.

2. The brief facts as stated in the appeal are that the claim petition was filed without impleading the appellant Insurance Company and only impleaded the driver and the owner of the offending vehicle. It is the contention of the appellant that as per the Award dated 16.01.2010 the award for Rs.4,55,344/- was to be discharged by the insured respondent No.7 M/s/ Buds Co., the owner of the offending vehicle. Reliance is placed on para 15 of the Award which states that the liability shall be discharged by respondent No.7 as respondent No.7 did not come forward to assist in the enquiry on the face of the plea of the insurer that the Insurance Policy cannot be produced or admitted in the absence of the validity of the insurance period having not been furnished by the insured. Hence, respondent No.7 was directed to deposit the award amount.

3. It is urged that vide impugned order dated 28.04.2014 in the execution petition the Tribunal has directed the appellant Insurance Co. to now deposit the award amount in modification of the directions of the Tribunal as given in the

Award dated 16.01.2010. Learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of United India Insurance Company Ltd. Vs. Shila Datta and Others, and the judgment of the Andhra Pradesh High Court in the case of United India Insurance Company Limited Vs. S. Rama Krishna Reddy and Others, and submits that the defences as available under Section 149 of the Motor Vehicles Act, 1988 are still available to the appellant even before the executing court as no adjudication on this was done by the Tribunal while passing its award dated 16.01.2010. The executing court would hence have gone into these issues.

4. The Supreme Court in the case of United India Insurance Co. Ltd. vs. Shila Datta & Ors. (supra) in para 11 held as follows:-

"11. ... The claim petition is maintainable against the owner and driver without impleading the insurer as a party. When a statutory notice is issued under Section 149(2) by the Tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can however be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal under Section 170 of the Act. Whatever be the reason of ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim."

5. The Andhra Pradesh High Court in the case of United India Insurance Co. Ltd. vs. S.Rama Krishna Reddy & Ors. (supra) in paras 8 and 9 held as follows:-

"8. A reading of the provisions referred to above discloses that an insurer is liable to satisfy the liability arising out of a judgment or award, if there exists a certificate of insurance. It is immaterial whether the insurance company was made a party to the proceedings giving rise to decree or not. Neither in Chapter XI nor Chapter XII it is made obligatory to implead an insurer in the petitions. Section 149 does not indicate that it is necessary to implead the insurer, before the liability is fastened to it. On the other hand, the use of the expressions "notwithstanding that the insurers may be entitled to avoid or cancel or may have avoided or cancelled the policy" and "as if he were the judgment debtor" presuppose the circumstance that the insurer is not a party to the proceedings, giving rise to the judgment or award. That being the case, the objection of the petitioner herein that unless it was a party to the O.P, it could not have been impleaded in the E.P., cannot be sustained.

9. It is not as if the petitioner is deprived of any defense and is made liable to pay the amount under the award without being heard. The Parliament had provided for certain circumstances under which an insurer can avoid the liability and permitted the insurer to put forward such claims even, in execution

proceedings. Sub-section (2) of Section 149 provides for as many as four defenses for an insurer to avoid the liability and makes it obligatory for it to be provided with such an opportunity in the execution proceedings. Sub-section (7) disentitles the insurer to take any other defenses, except those provided for under Sub-section (2) . Hence, it cannot be said that the petitioner had suffered any prejudice on account of its being impleaded in the execution proceedings. The question as to whether there existed any policy at all, or whether the petitioner can avoid the liability on the grounds specified in Sub-section (2) , can be urged before the Executing Court. If the petitioner is not impleaded on the ground that it was not a party to the proceedings to the O.P., it would defeat the very object of Chapters XI and XII of the Act."

6. Hence, it clearly follows that a question as to whether the appellant can avoid the liability on the grounds specified under Section 149 of the Motor Vehicles Act can be urged before the executing court if these have not been adjudicated upon by the Tribunal in the earlier round of litigation. Hence, it would be open to the appellant to raise his defences as provided under Section 149 of the M.V.Act before the executing court who will deal with it in accordance with law.

7. With these observations, the appeal stands disposed of.

8. Impugned order dated 28.04.2014 is accordingly set aside.

9. Pending application of stay also stands disposed of.

