(2018) 02 AHC CK 0019

In the Allahabad High Court

Case No : 2784 of 2011

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Siyalali And Others RESPONDENT

Date of Decision : 23-02-2018

Acts Referred:

Citation : (2018) 02 AHC CK 0019

Hon'ble Judges : Bala Krishna Narayana, Irshad Ali

Bench : Division Bench

Advocate : S.K. Kakkar, Sumit Kakkar, Jagdish Singh Bundela, S.D.Ojha

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the parties.

2. This first appeal from order has been filed by the appellant, Oriental Insurance Co. Ltd. challenging the validity of the judgement and award dated 21.04.2011 passed by Additional District Judge, Court No.1/Motor Accident Claims Tribunal, Chitrakoot by which the Motor Accident Claim Petition No. 94/70/2010 filed by claimants/respondent nos.1 to 6 claiming a sum of Rs. 34,35,407/- as compensation for the death of one Omprakash Pandey, husband of claimant/ respondent no.1 and father of claimant/respondent nos.2 to 6 as a result of injuries received by him in an accident caused due to rash and negligent driving of Commander Jeep bearing registration no. U.P.-96-8567 by its driver on 29.05.2010 at about 10 A.M. while he was going with his friend, Kamlesh Kumar Soni on his motorcycle to purchase some goods, was allowed in part and a sum of Rs. 10,58,240/- was awarded as compensation to the claimants/respondents against the appellant with the right to the Oriental Insurance Co. Ltd. to recover the amount of compensation paid by it to the claimants/respondents from the respondent no.7, owner of the Commander Jeep, hereinafter referred to as the offending vehicle.

3. Learned counsel for the appellant has submitted that the Tribunal committed a

patent error of law in fastening the liability of payment of compensation to the claimants/respondents on the Oriental Insurance Co. Ltd. despite recording a categorical finding that there was breach of terms of the policy. The quantum of the compensation was also criticized as being highly inflated.

4. Per contra learned counsel for the claimants/respondents submitted that since the appellant-Oriental Insurance Co. Ltd. has been given the right to recover the amount of compensation paid by it to the claimants/respondents under the impugned judgement and award from the respondent no.7, owner of the offending vehicle who has admittedly not filed any appeal against the impugned judgement and award, the same is not liable to be set-aside on the basis of the submissions made by learned counsel for the appellant. This appeal lacks merit and is liable to be dismissed.

5. As rejoinder to the submissions made by learned counsel for the claimants/ respondents, learned counsel for the appellant submitted that although the right to recover the amount of compensation has been given to the appellant-Oriental Insurance Co. Ltd. against the owner of the offending vehicle but in view decision of the full Bench of this Court in the case of United India Insurance Co. Ltd. Versus Smt. Shashi Prabha Sharma and Others reported in 2015 (4) T.A.C. 650 (All.) holding that where the Insurance company is directed to pay the amount at the first instance despite having been held not to be under a legal liability to pay awarded amount, while permitting the insurer to recover the amount from the owner, the procedure which has been laid down in the case of National Insurance Co. Ltd. v. Challa Upendra reported in 2004 (57) A.L.R. 284 (S.C.) requiring that before the amount is released to claimants/respondents, owner of the offending vehicle should be asked to furnish security for the amount which the insurer has to pay to the claimants/respondents has to be followed, it is imperative that this Court, if it proposes to dismiss this appeal, should clarify that before the amount of compensation is released to the claimants/respondents, owner of the offending vehicle respondent no.7 should be asked to furnish security for the amount which the appellant has to pay to the claimants/respondents.

6. Paragraph 31 of Smt. Shashi Prabha Sharma (supra) which is relevant for our purpose is being reproduced hereinbelow:- In these circumstances, we hold that where the insurer is directed to pay the amount in the first instance despite having been held not to be under a legal liability to pay the awarded amount, while permitting the insurer to recover the amount from the owner, the procedure which has been laid down in Challa Upendra Rao (supra) would have to be followed. This would envisage that before the amount is released to the claimant, the owner of the offending vehicle shall furnish security for the amount which the insurer has to pay to the claimants. The offending vehicle is to be attached as a part of the security for the purpose of recovering the amount from the insured. The insurer shall not be required to file a suit and may initiate a proceeding before the executing Court. The executing Court may pass appropriate orders in accordance with law as to the manner in which the insured,

namely the owner of the vehicle, shall make payment to the insurer. In the event that there is any default, it is open to the executing Court to direct realisation by the disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle. In the event that the person on whose behalf payment has been made by the insurer, does not furnish security or is not in a position to furnish security to the insurer, the insurer should promptly move the executing Court. The executing Court shall then duly ensure that it exercises all its available powers in execution in accordance with law so that while on one hand payment is made to the person to whom it is due, the concerns of the insurer are duly balanced. We may only add here that all necessary and proper steps should be taken by the executing Court to ensure that the intent and object of the legislature in enacting the beneficial provisions of the Act is duly preserved and are expeditiously implemented.

7. The relevant extract of the judgement of the Apex Court in Challa Upendra Rao (supra) upon which reliance has been placed by the full Bench of this Court in Smt. Shashi Prabha Sharma (supra) is also being reproduced hereinbelow:- "...Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, 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 claimants, owner of the offending 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 concerned Regional Transport Authority. 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 realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

8. Having heard the learned counsel for the parties and perused the impugned judgement and award as well as the law reports cited by the learned counsel for the appellant, although we are not inclined to interfere with the impugned judgement and order but keeping in view the directions issued by the Apex Court in case of Challa Upendra Rao (supra) and by the full Bench of this Court in the case of Smt. Shashi Prabha Sharma (supra), we direct the M.A.C.T., Chitrakoot that the awarded amount of compensation which has already been deposited by the appellant before the M.A.C.T., Chitrakoot in compliance of the interim order of this Court dated 12.08.2011, shall not be released until the respondent no.7,

owner of the offending vehicle furnishes security for the amount which the appellant has to pay to the claimants/respondents. The appellant-Oriental Insurance Co. Ltd. shall file an application in this regard before the M.A.C.T., Chitrakoot within two weeks from today. The M.A.C.T., Chitrakoot shall thereafter initiate necessary proceedings to enforce the presence of the respondent no.7, owner of the offending vehicle before it and require him to furnish the requisite security and thereafter the awarded amount of compensation shall be released in favour of the claimants/respondents.

9. Subject to aforesaid directions, this appeal stands disposed of.

