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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 23rd April, 2010

Date of Order: 29th April , 2010

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C.M. (M) No.846/2007

29.04.2010

THE NEW INDIA ASSURANCE CO. LTD. Petitioner
Through: Mr. Ramesh Kumar, Advocate.

versus

BAHWAN SINGH & ORS. Respondents
Through: Mr. B.K. Choudhary, Advocate for
R-1.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition, the petitioner has assailed an order of learned Tribunal passed during execution of award, whereby the Tribunal directed the petitioner to pay balance 50% of the compensation and gave liberty to the petitioner to recover the same from JD No. 1.

2. The brief facts relevant for the purpose of deciding this petition are that on a claim petition under section 163-A of the Motor Vehicle Act, 1988, the learned Tribunal passed an award on 7th January, 2005 holding that the accident arose out of the use of

two trucks bearing No WB-03-9426 & DL-IG-6071. Respondent No. 4, i.e. the petitioner herein, was insurer of truck No. DL-IG-6071. There was no evidence on record that the other truck stood insured on the date of accident. Respondent No. 1, who was the owner of other truck, had not joined the proceedings. Under these circumstances, the Tribunal held that the compensation awarded by it shall be jointly and severally borne by Respondent No 1, 3 and 4. Respondent No. 2 was held not liable to pay compensation. The Tribunal after holding that Respondent No. 1, 3 and 4 were jointly & severally responsible to pay compensation, it directed that total amount of compensation shall be paid in equal share by Respondent No. 1 and 4. Respondent No. 4 paid its part of compensation. An execution petition was preferred by the claimant in respect of remaining 50% of the award against Respondent No. 1, i.e., owner of the other truck. Since the execution could not be effected against Respondent No. 1, an application was made by the claimant that the decree be executed against JD No. 4, i.e., the present petitioner. The Tribunal vide order dated 17th April, 2007 allowed this application and directed the petitioner to deposit remaining 50% of the award amount along with interest, hence this petition.

3. The petitioner has assailed the order on the ground that Tribunal having passed the award dated 7th January, 2005 directing the Petitioner and Respondent No. 2 to deposit the award amount

equally, had become functus officio and had no power to review its own judgment. It is also submitted that assuming that there was any tortfeasor, it was the driver of the offending Truck who caused accident with Truck No. WB-03-9426 as per claim petition. Even assuming (without admitting) that there were two joint tortfeasors then one of the tortfeasors would have been the claimant himself who was driving Truck No. DL-IG-6071. He could not have been offender and the victim at the same time and therefore the claimant was not liable to recover the amount. It was further submitted that as per Section 147 of the Motor Vehicles Act, the liability of the petitioner was to the extent of liability under the Workmen's Compensation Act, 1923 with respect of claim of the claimant who was driver of the Truck and sustained permanent disability. The said liability was less than 50% of the compensation deposited by the petitioner. So the petitioner cannot be asked to deposit balance 50% of the compensation amount. Under any circumstance, the Tribunal could not have asked to deposit the remaining decretal amount and to recover the same from the Respondent no. 2, owner of the offending vehicle since the petitioner had not insured the risk of the offending truck WB-03-9426.

4. It is submitted by respondent counsel that under section 163-A of M.V. Act, the Tribunal could not have gone into negligence part. It is further submitted that the Tribunal had not reviewed the

award. The award itself shows that the liability to pay compensation was joint and severe on Respondent No 1,3 and 4. Once the Respondent No. 4 was held jointly and severely liable for the entire amount, the same could be recovered from Respondent No. 4 i.e. the present petitioner.

5. The scheme of section 163-A of M.V. Act is quite clear. Section 163-A provides for award of compensation and liability of insurer to pay compensation as indicated in the Second Schedule notwithstanding anything contained in the Act or in any other law for the time being in force or instrument having the force of law. Section 163-A of M.V. Act makes the owner of the motor vehicle or the authorized insurer absolutely liable to pay compensation in the case of death or permanent disablement due to accident. The Hon'ble Supreme Court in *Deepal Girish Bhai Soni's case 2004 ACJ 934 (SC)* held that section 163A was a self contained Code and the liability could not depend upon or be subject to any other condition or any other provisions of law. Therefore, the plea taken by the petitioner that its liability was limited to compensation as would have been paid under Workmen's Compensation Act, 1923 is not tenable and the compensation payable by the petitioner has to be in accordance with the provisions as laid down under section 163A of M.V. Act.

6. The only other question which remains to be answered is that whether the award passed holding three JDs jointly and severely

liable for the payment of compensation could be executed against the insurance company solely with liberty given to the insurance company to recover the 50% amount from the other JDs? I consider that law on this issue is quite clear where a decree is passed jointly and severally against different JDs, the entire decretal amount can be recovered from one of the JDs and the JD from whom the amount is recovered has a liberty to recover the share of other JDs from them. Merely because the Tribunal has expressed its opinion that two group of JDs would be liable for 50% of the award amount, would not change the nature of decree passed by the Tribunal being a decree recoverable jointly and severally against the JDs. The plea taken by the DH/petitioner that this amounted to review of the award is not tenable.

7. In *Om Wati Vs. Mohd. Din & Ors.*, 2002 ACJ 868, a Division Bench of this Court held:

“Coming to the question of apportionment, it seems to us that First Appellate Court was in error in holding that claimants would have to forego 30 per cent share of their awarded compensation in favour of the joint tortfeasors of the truck present before the court as they had failed to implead tortfeasors of the car as party respondents in their claim suits. This is because the accident could not be wholly treated to be the result of contributory negligence. Even if it was assumed that the drivers of the two vehicles contributed to the

accident in some measure, the other two deceased who were travelling in the car could not be held responsible for any such negligence. Therefore, it was a case of composite negligence in their cases. The principle of composite negligence is that where more than one person are responsible for commission of the wrong, the person wronged has a choice of proceedings against all or any one or more. Any one of the wrongdoer is liable for the whole damage if it is otherwise made out. In other words the liability of two sets of tortfeasors becomes both joint and several.

8. I, therefore, find no force in this petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA, J.

April 29, 2010
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