

Party Name : SIKHA DATTA (BANIK) Vs HARICHARAN TRIPURA & ORS

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THE HONBLE MR. JUSTICE S.C.DAS

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Heard learned counsel, Mr. A. De for the petitioner.

This is a petition under Article 227 of the Constitution of India challenging execution proceeding No. 17 of 2014 pending before Certificate Officer (SDM), Sabroom.

Brief fact is that vehicle No. TR-03A-2015 (Tata Magic) belonging to the petitioner met an accident on 05.09.2010 at about 07.30 hours at Village-Shakbari on the main road and because of the accident Gita Rani Tripura died. A motor accident claim case barring Case No. T.S. (MAC) 96 of 2011 was filed before the sole Member, Motor Accident Claims Tribunal, South Tripura, Udaipur by one Hari Charan Tripura and in that claim case the present petitioner Smt. Sikha Dutta (Banik) who was the owner of the vehicle at the relevant point of the time was arrayed as respondent No.1 and her driver Sudarsan Banik was also arrayed as respondent No.2 and Oriental Insurance Company Limited was arrayed as respondent No.3.

Notice was issued to the respondents but the petitioner and her driver i.e. the respondent Nos.1 and 2 of the claim case did not turn up. So the claim case was proceeded *ex-parte* against them.

On 07.11.2013 the Tribunal passed judgment and award in the claim case and awarded an amount of Rs.3,17,500/- in favour of the claimant-petitioner.

The present petitioner Smt. Sikha Dutta (Banik) who was owner of the vehicle was held responsible for making payment of the compensation with 6 per cent interest and it was directed that the payment should be made within two months failing which it shall carry interest at the rate of 9 per cent per annum till the entire payment is made.

Since the award was not satisfied, the tribunal issued certificate and sent the certificate to the SDM, Sabroom for realization of the awarded amount and accordingly Execution Case No. 17 of 2014 has been registered which is now pending before the Certificate Officer.

It is submitted by Mr. De, learned counsel of the petitioner that the petitioner being the owner of the vehicle had all valid documents i.e. certificate of insurance, registration certificate, tax token and valid driving license of the driver but because of wrong advice of the neighbourers the petitioner failed to appear before the Tribunal and consequently failed to submit any written statement and documents of the vehicle, etc. and as a result the award was passed against her. Now since the execution proceeding is in the process and the executing Court is going to attach the property of the petitioner and since the petitioner has got all valid documents she may be given a scope at least to challenge the original award.

Mr. De, learned counsel further submits that the petitioner is a poor lady and the vehicle is the only source of livelihood, she could not take proper steps in appropriate time but she had all documents including certificate of insurance covering the date of accident. Though insurance company was made a party and appeared in the proceeding before the Tribunal but the insurance company remained silent about the insurance coverage of the vehicle on the date of accident and that was the fault of the Insurance Company for which the petitioner should not be punished.

This is a petition under Article 227 of the Constitution of India. So the petitioner has to show that the action taken by the inferior Court /Tribunal suffers from want of jurisdiction, error of law or there is a perverse finding or that there is a violation of the principles of natural justice. There is no such material to draw jurisdiction of this Court under Article 227 of the Constitution. The accident occurred on 05.09.2010. The Tribunal passed award on 07.11.2013. Copy of the judgment passed by the Tribunal shows that notices were duly served on O.P No.1 i.e. the present petitioner and O.P. No.2 i.e. the driver of the vehicle but they did not appear. Sufficient opportunity was given to them but they did not contest the case and so, by an order dated 13.02.2013 the claim case was directed *ex-parte* against respondent Nos.1 and 2.

After the award was passed by the Tribunal, having jurisdiction, it has to be executed unless interfered in a review or appeal.

The petitioner would challenge the judgment and award according to law but has not done so. While the award is in force and a certificate was issued, the Certificate Officer is bound to execute the certificate unless it is recalled by the Tribunal.

There is no jurisdictional error or perversity in the action taken by the Certificate Officer. The revisional application therefore, is found to be devoid of any merit and I find no ground at all to issue notice to the respondents and to take any further action on the revisional application.

Accordingly, the revisional application stands dismissed.