IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4133 OF 2012

Anwar Imam Saheb Shaikh,
Age: 43 yrs., Occ. Service,
R/o at present Islampura,
Opp. Gangadham, Rind Road,
Latur ..PETITIONER
(Orig. J. D. No. 1)

VERSUS

1) Zaheda Begum Abdul Hamid Shaikh,
Age: 53 yrs., Occ. Household,
R/o Azam Chowk, Old Labour Colony,
Latur, Dist. Latur

2) Dada Miya Ismail Saheb Shaikh,
Age: 43 yrs., Occ. Business,
R/o Lal Godown, Sale Galli,
Latur

3) United India Insurance Co. Ltd.,
Branch – main road, Gorakshan,
Latur

4) Shamshad Begum Mahemood Shaikh,
Age: 33 yrs., Occ. Household,
R/o Sanjay Nagar, Near Habib
Kirana Stores, Latur ..RESPONDENTS
(Orig. Claimant & J.D.
Nos. 2 to 4)

Mr Dhananjay P. Deshpande, Advocate for petitioner;
Mr V. P. Golewar, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 30th March, 2015

ORAL ORDER :

By this petition, the petitioner/judgment debtor No.1, seeks to challenge the order dated 30th March, 2012, passed by the Executing Court, i.e. Principal District Judge and *Ex officio* Member, Motor Accident Claims Tribunal, Latur, below Exh.13, in Regular Darkhast No.97 of 2009.

2. Respondent no.1/original claimant Zaheda Begum is mother of the deceased Mahemood, who suffered an accident on 29th October, 2000, when the petitioner was driving the two wheeler in question, however, it is an admitted fact that he is not owner of the said vehicle. It is also not in dispute that the said vehicle was not insured. Deceased was a pillion rider on the said vehicle.

3. The Additional District Judge and *Ex officio* Member, Motor Accident Claims, Tribunal, Latur, allowed the claim under section 140 of the Motor Vehicles Act, in regard to 'no fault liability', by an order dated 29th June, 2004, at which moment, the wife of deceased, i.e. respondent no.4 to the claim petition was not a party.

4. The Principal District Judge and *Ex-officio* Member, Motor Accident Claims Tribunal, Latur, partly allowed the claim under section 166 of the said Act, by judgment and award dated 15th September, 2008, the

operative part whereof reads thus :-

> “The claim is partly allowed.
>
> The claimant and respondent No.4 are entitled for compensation of Rs.55,000/- (Rs. Fifty Five Thousand only), inclusive of amount of N.F.L., together with future interest @ 7.5% p.a. from the date of the petition till realization of the amount of compensation.
>
> The opponent Nos.1 and 2 are, jointly and severally liable to pay amount of compensation together with proportionate costs and future interest and shall pay it within two months from the date of this order.
>
> The opponent Nos.1 and 2 shall bear the proportionate costs of this claim of the claimants and shall bear their own costs.
>
> Claim stands dismissed against respondent No.3.
>
> On depositing or recovery of the amount of compensation, along with costs and interest, it be paid equally to claimant and respondent No.4.
>
> An award be drawn accordingly.”

5. After the above referred judgment and award, execution proceedings being Regular Darkhast No.269 of 2009 were filed by

respondent no.4 – wife of deceased, to which she filed a purshis stating that she has received amount under award from the judgment debtor, i.e. present petitioner and as such Darkhast be disposed of. The learned Executing Court passed an order on 25th June, 2010 ordering filing of the said Darkhast.

6. The claimant Zaheda Begum filed Regular Darkhast No.97 of 2009 claiming an amount of Rs.44,715/- as on 19th May, 2009. The present petitioner, who was judgment debtor No.1, sought dismissal of the said proceedings on the count that the execution petition filed by respondent no.4 - claimant against the judgment debtor was satisfied as an amount of Rs.49,000/- was paid to Shamshad Begum on 24th June, 2010. The said Shamshad Begum is real sister of present petitioner, whereas the claimant Zaheda Begum is the sister of owner of the vehicle, namely, Dadamiya, who was respondent no.2 to the claim petition.

7. In the light of above, the petitioner sought dismissal of the execution proceedings filed by Zaheda Begum, being Regular Darkhast No.97 of 2009.

8. In Regular Darkhast No.97 of 2009, application Exh.15 came to be moved by decree holder Zaheda Begum, praying attachment of salary of the present petitioner as he is an employee of Municipal Council, Latur

and sought payment of the decretal amount. It is the case of the present petitioner that having satisfied the amount to the extent of which he was liable in accordance with the provisions of section 141 of the said Act, he should not have been directed by the order impugned to pay the amount from his salary. Thus, the present petition.

9. Mr Deshpande, learned Counsel appearing on behalf of the petitioner-judgment debtor no.1, would urge that the order dated 30th March, 2012 passed by the Executing Court directing recovery of amount of Rs.2,000/- per month from the salary of the petitioner till the satisfaction of the decree, as is reflected in the said order, is contrary to the very scheme of section 140 (2), proviso to sub-section 5, section 141 and proviso (1) to section 168 (1) of the said Act. In the light of the said provisions, he would urge that section 140 mandates the payment of 'no fault liability' by the owner of the vehicle, i.e. respondent no.2, whereas respondent no.2 having not satisfied the claim, the petitioner was required to satisfy the same, as is apparent from purshis Exh.14 at page 36 of the paper-book.

10. In addition to above, learned Counsel would urge that once the amount of 'no fault liability' is required to be paid by the owner, the said amount having been paid by the present petitioner, not being an owner but a driver of the vehicle, the remaining award is required to be satisfied by respondent no.2 Dadamiya. He would further urge that the claimant

Zahida Begum has sought execution of the decree against the present petitioner in view of the fact that the owner of the vehicle, namely, Dadamiya happened to be her real brother and as such she is not interested in proceeding against him.

11. In support of his contention, learned Counsel has relied on the judgment of the Apex Court, in the matter of **Smt. Yallwwa & ors. vs. National Insurance Co. Ltd. & anr**., reported in **2007 (4) ALL MR 822**, particularly observations made in paragraph 18 of the said judgment, which read thus :-

> *"Furthermore, it is not in dispute that there can be more than one award particularly when a sum paid may have to be adjusted from the final award. Keeping in view the provisions of Section 168 of the Act, there cannot be any doubt whatsoever that an award for enforcing the right under Section 140 of the Act is also required to be passed under Section 168 only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. A Claims Tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been substantiated, which is the basis for making an award."*

Based on the above observations of the Apex Court, learned Counsel would urge that the proceedings under section 140 and that of section 141 read with section 168 (1) of the Act are required to be treated as two separate proceedings, as according to him, the awards passed thereunder are independently executable. He would further urge that the estoppel shall never operate against the law and according to him, even if the said plea in relation to the legal obligation of respondent no.2 to pay 'no fault liability' was not raised prior in point of time, he is not estopped from raising the same as the same, according to him, is mistake or wrong understanding of law. In support thereof, he has drawn support from paragraph 9 of the judgment of the Apex Court, in the matter of **M/s Groupe Chimique Tunisien SA vs. M/s Southern Petrochemicals Industries Corpn. Ltd.**, reported in **AIR 2006 SC 2422**.

12. Based on the above submissions, learned Counsel would urge that the order of attachment is not sustainable and deserves to be set aside.

13. Per contra, learned Counsel appearing on behalf of respondent no.1/original claimant would urge that the liability adjudicated by the Motor Accident Claims Tribunal is joint and several. According to him, the said award could be executable against any of the parties to the award and has sought support from the judgment of the Apex Court, in the matter of **M/s Industrial Credit and Development Syndicate now called I.C.D.S. Ltd**. vs. **Smt. Smithaben H. Patel and ors**., reported in **AIR 1999 SC 1036**. He would further urge that once the Tribunal has ordered joint and several liability, it is open for the respondent/claimant to recover it from all the parties or any one of them, as the liability is ordered to be joint and

several. In addition to above, he has disputed the relationship with the owner of the vehicle and has urged that the execution proceedings is filed by the claimant against all the parties to the claim petition and according to him, the parties *inter se*, who are liable to pay the amount of compensation, may settle their claim either by taking recourse to appropriate proceedings in the Court of Law against each other or as shall be advised.

14. Learned Counsel would further urge that though the claim of 2000 was adjudicated and decided in 2008, respondent no.1 has not received anything and, therefore, prayed for dismissal of the petition.

15. Having analyzed the contentions raised by the parties, particularly the claim of the petitioner that the proceedings under sections 140 and 141 of the Act are two parallel proceedings and there cannot be an interception of these two proceedings, in my opinion, is liable to be rejected in view of the very scheme of these two sections. No doubt, section 140 casts a burden on an owner of the vehicle to honour the award of payment of no fault liability. However, if we read the provisions of section 140 along with section 141, section 141 of the Act restricts the other claim to be honoured, based on the earlier award of no fault liability. So far as the above conclusion is concerned, this Court can conveniently draw support from conjoint reading of the provisions of sub-sections (2)

and (3) of section 141 of the Act. In the light of above, it is noticed that even if no fault liability award is not honoured, the Tribunal is not estopped from ordering execution of the same while passing the final award under section 141. In the light of above, reliance sought to be placed by the learned Counsel for the petitioner on the judgment of the Apex Court, in the matter of Smt. Yallwwa & ors. (cited supra), is wholly misplaced as the issue that fell for consideration before the Apex Court was in relation to the forum that is available while questioning the legality of an order passed under section 140 of the Act. The Apex Court, while dealing with the provisions of Chapter XII of the said Act, particularly provisions of section 168 has interpreted the scheme of the Motor Vehicles Act and has recorded a finding that the remedy available is only by way of an appeal, which is creation of statute.

16. In the light of above observations, the contentions raised by the present petitioner are liable to be rejected.

17. The next contention of the petitioner is that 'no fault liability' was an obligation of the owner of the vehicle who was duty bound to honour he same in view of statutory provision is concerned, once the Tribunal has passed an award holding the parties to the claim liable jointly and severally for paying compensation to the claimant, it is for the claimant to claim and recover such compensation either jointly or severally.

18. So far as the case in hand is concerned, the claimant has sought to proceed against the owner of the vehicle also in the execution proceedings, however, it is upon the request of the claimant, an order came to be passed attaching the salary of the present petitioner, to the extent of Rs.2,000/- per month, till the satisfaction of the award.

19. In view of the award passed by the Tribunal, the least that is expected of the Executing Court is to travel within the scope of the said award, as the same is termed as an 'executable decree', within the meaning of Order XXI of the Code of Civil Procedure.

20. The Executing Court, which has passed an order attaching the salary of the present petitioner, to the extent of Rs.2,000/- per month, in my opinion, was alive to the equity that is required to be weighed. As such, the said contention of the present petitioner is also rejected.

21. In view of above, in my opinion, no case for interference in extra-ordinary jurisdiction of this Court, is made out. The writ petition fails and stands dismissed with no order as to costs.

22. Upon request of the present petitioner, liberty is granted to him to initiate appropriate proceedings for recovery of the amount from co-defendant in view of provisions of the Act.

(N.W. SAMBRE, J.)

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