IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

First Appeal No. 1830 of 2013

The Oriental Insurance Company,
Through its Divisional Manager,
Divisional Office at Adalat Road, .. Appellant
Aurangabad. (Original respondent no.3)

versus

1. Haribhau Ghasi Chavan,
   Age : 44 years,
   Occupation : Labourer,
   R/o. Malegaon,
   Taluka : Mantha,
   District : Jalna.

2. Paltan s/o. Mewalal Gupta, .. Appeal dismissed as
   Age : 54 years, against respondent no.2.
   Occupation : Driver,
   R/o. Mathanha,
   Taluka : Dumariyaganj,
   District : Siddharth Nagar
   (Bihar).

3. Ramlakhan Bhagirathi Pal,
   Bhagirathi Seth Patra Chawl,
   Room No. 344, T.J. Road, .. Respondents
   Sowri, Mumbai. (Original respondent nos.1 & 2)

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Mr. U.S. Malte, Advocate, for the appellant.

Mr. P.R. Jadhav, Advocate, for respondent no.1.

Appeal dismissed as against respondent no.2
vide order dated 27-9-2013.

Respondent no.3 served (Absent).

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CORAM : A.M. BADAR, J.

DATE : 24TH NOVEMBER 2015

PER COURT :

1. This is an appeal by the appellant / original respondent no.3 - Insurance Company challenging the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Aurangabad, in M.A.C.P. No. 117/2009, between the parties, on 12-3-2013, to the extent of liability of the Insurance Company to satisfy the award first and then to recover the same from owner of the offending vehicle.

2. Shri Malte, the learned Counsel appearing for the appellant - Insurance Company, relying on the order passed by the Supreme Court in the case of ***National Insurance Company Limited Vs. Parvathneni & another***, reported in ***(2009) 8 SCC 785***, submits that the issue as to direction to the Insurance Company to satisfy the award first and then to recover the same from the owner is referred to the Larger Bench of the Supreme Court and as such, the impugned award to the extent of directing Insurance Company to satisfy the award is incorrect.

3. As against this, Mr. Jadhav, the learned Counsel appearing for respondent no.1, submits that pay and recover order is correctly passed by the learned Chairman of the Motor Accident Claims Tribunal.

4. Upon hearing rival submissions, I am of the considered view that the learned Chairman of the Tribunal has considered the existing law on the aspect and after examining some judgments of the Hon'ble Supreme Court, has rightly directed the Insurance Company to satisfy the award first and to recover the same from the owner. The vehicle involved in the accident was also directed to be attached as a part of security along with further directions.

5. This Court is consistently following the same practice of directing the Insurance Companies to satisfy the award first and valuable reference can be had from judgment of this Court in the case of ***Oriental Insurance Co. Ltd. Vs. Suhas and others***, reported in ***2013 ACJ 935***. Relevant portion of para 4 as well as para 5 of the said judgment can be quoted with advantage and it reads thus :-

> "4. .... The learned Counsel for the appellant further relied upon the judgment in *Manager, United India Insurance Co. Ltd. Vs. Kamalabai Mukunda Kumare, 2012 ACJ 1011* (Bombay). However, after going through the judgments of the Tribunal, it is clear that the legal position, as it stands today, has been well considered by it, which is evident from the observations made thus :
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> > "(34) However, the Hon'ble Bombay High Court in the case of *United India Insurance Co. Ltd. v. Sindhubai Darwante,* 2010 (3) Mh.LJ 886, discussed all the authorities including decision given by the Apex Court in the case of *National Insurance Co. Ltd. v. Parvathneni* (supra). The Hon'ble Bombay High Court relying upon the cases of

> *National Insurance Co. Ltd. v. Narendra Kaur*, (2008) 9 SCC 100; *Oriental Insurance Co. Ltd. v. Brij Mohan*, 2007 ACJ 1909 (SC); *New India Assurance Co. Ltd. v. Darshana Devi*, 2008 ACJ 1388 (SC), etc. came to the conclusion that the insurer can be directed to first deposit the compensation and then recover it from the insured. It is also noted that the Supreme Court in the case of *Parvathneni* has a doubt about the correctness of the decision given in the other cases and, therefore, the question has been referred to the larger Bench.
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> (35) The decision given by the Hon'ble Bombay High Court relying upon the decision of the Apex Court persuades me to take the view that when it is established by the insurance company that they are not liable to pay the compensation on account of the owner committing breach of the terms and conditions of the policy also the insurance company can be directed first to deposit the compensation and recover it from the owner of the vehicle. "

5. After decisions of this court in *United India Insurance Co. Ltd. v. Sindhubai Darwante*, 2010 (3) Mh.LJ 886, the Apex Court in *Kusum Lata v. Satbir, 2011* ACJ 926 (SC), held that the Tribunal as well as the High Court has jurisdiction to issue directions to the insurance company to satisfy the award and then to recover the same from vehicle owner. Similar view has been taken by the Apex Court in *Jawahar Singh v. Bala Jain*, 2011 ACJ 1677 (SC) and also by Division Bench of Allahabad High Court in *Oriental Insurance Co. Ltd. v. Chandra Devi*, 2012 ACJ 567 (Allahabad). "

6. In this view of the matter, appeal is devoid of any substance and therefore the order :

ORDER

The Appeal is dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

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