

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4655 of 2008

Date of decision: May 19th, 2015.

National Insurance Company Limited

... **Petitioner**

v.

Chander Parkash and others

... **Respondents**

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present: Shri Tanmay Gupta, Advocate, for
Shri Sumain Jain, Advocate for the petitioner.

Shri Sanjiv Gupta, Advocate for respondent No.2.

Dr. Bharat Bhushan Parsoon, J.

This revision petition by respondent No.3 in the claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (in short the Act) before the Motor Accident Claims Tribunal (MACT), Karnal, is directed against order dated 9.4.2008 passed by the Tribunal in execution proceedings, whereby application of the petitioner-insurance company for recovery of decretal amount from respondents No.1 and 2, viz., the driver and owner of the offending vehicle, was dismissed.

2. It is claimed that the executing court failed to exercise its jurisdiction by not directing the respondents to satisfy the decree when judgment dated 27.4.2002 by this Court had granted liberty to the insurance company to recover the amount from the owner/driver according to law.

3. It is urged by Counsel for the petitioner-insurance company that the term “according to law” means that either the execution petition could be filed before the Tribunal itself or a recovery suit could be filed in a civil

court. It is urged that finding of the Tribunal in refusing to order recovery from owner and driver in favour of the petitioner insurance company, is bad in law.

4. Counsel for the respondent-owner on the other hand has urged that granting of recovery rights in favour of the petitioner insurance company *ipso-facto* did not mean that liability was fastened to the respondent-owner without even providing opportunity of hearing or without even following the legal recourse.

5. Counsel for the respondent seeking support from Pepsu Road Transport Corporation v. National Insurance Company, 2013(4) RCR (Civil) 273 (SC), has urged that even where the driver possessed a fake driving licence, insurance company is still liable to pay the compensation and owner of the vehicle is not liable. Support has also been sought from Lal Chand v. Oriental Insurance Co. Ltd., 2006(4) RCR (Civil) 204 (SC), urging that absence, fake or invalid driving licence or disqualification of driver are not defences available to the insurer against insured or third parties.

6. There is no dispute as regards the proposition of law laid down by the Hon'ble Apex Court in the aforesaid judgments. With due deference to the *ratio decidendi* of the aforesaid two judgments, which is clear and transparent, it is felt that there is no issue as such needing application of these authorities to the facts of the instant case.

7. The issue involved herein is simple and straight, viz, whether the insurance company is entitled to recover the amount of Award, i.e., Rs.1,20,700/- paid by it to the claimants. Even though the Tribunal vide its Award of 4.1.2002 has held that as the insurance company had failed to produce any evidence to prove that driver of the offending vehicle was not holding a valid driving licence to drive a truck at the time of the accident, it is to be presumed that the driver was holding a valid driving licence, but still had proceeded to fasten the liability of payment of compensation jointly and severally upon the driver, owner and insurance company. Even though this direction by the Tribunal was wrong and illegal in contradiction to its

own finding on issue No.2, there is nothing on record to suggest as to whether this finding was ever challenged by the driver or owner of the offending vehicle.

8. As per Section 2(2) of the Civil Procedure Code, 1908, “decree” is the formal expression of an adjudication, from which an appeal lies as an appeal from an order. In this view of the matter, an Award passed by the Tribunal under the provisions of the Act is a decree which can be got executed like any other civil court decree before the executing court.

9. In consonance with Section 168 of the Act, grant of any compensation on an application under Section 166 of the Act, is an award of the Tribunal. It is a cardinal principle of law that the executing court cannot go behind the decree and it has to execute the decree as it is without construing anything beyond the same. The executing court is thus statutorily restrained from imposing its own findings dislodging the findings of the trial court. In the present case also, it was incumbent upon the executing court to execute the decree in its true letter and spirit.

10. The executing court in the process of executing the decree, vide its order of 9.4.2008 faltered in comprehending the Award of 4.1.2002 of the Tribunal wherein under issue No.2 it has categorically been held that all the respondents are jointly and severally liable to pay the amount of compensation to the claimants. It also erred in interpreting order dated 27.4.2002 passed by this Court in FAO No.2077 of 2002, which clearly gave liberty to the appellant-insurance company to recover the amount from the owner/driver in accordance with law in terms of the findings returned by the Tribunal under issue No.2.

11. At the cost of repetition, it is once again mentioned that the Tribunal under issue no.2, though had noted the fact that the insurance company failed to prove that the driver was not holding a valid licence and inference was drawn therefor that he was holding a valid driving licence, but had directed all the respondents to bear the burden jointly and severally. In these circumstances, assertion of the executing court in order dated

9.4.2008, that this Court had not reversed the findings on issue No.2 is misdirected and unfounded.

12. In view of the aforesaid discussion, the revision petition is allowed; order dated 9.4.2008 is set aside and the Tribunal, as the executing court, is directed to decide the application afresh in the light of observations of this Court made in earlier order of 27.4.2002, after hearing Counsel for the parties.

May 19th, 2015.
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[Dr. Bharat Bhushan Parsoon]
Judge

1. *Whether Reporters of local papers may be allowed to see the judgment ? yes*
2. *Whether to be referred to the Reporters or not ? yes*
3. *Whether the judgment should be reported in the Digest? yes*