218.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4166 of 2013 (O&M)
Date of decision: 07.12.2015

& <u>Civil Revision No.4167 of 2013</u> (O&M)

Lakhwinder Singh @ Pehlwan ... Petitioner

versus

United India Insurance Company Limited and another.
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Nakul Sharma, Advocate,
for the petitioner.

Mr. Gopal Mittal, Advocate,
for respondent No.1.
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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

<u>K.Kannan, J.</u> *(Oral)*

1. Both the civil revisions are connected and they are disposed of by a common order.

2. Against a petition filed for recovery of amount by the insurer against the owner and driver, of the amount which is covered under the decree and deposited by the insurer, the contention was that the award has become unenforceable since the persons in whose

favour the award has been passed have themselves died.

3. The objection has to be rejected. There can be no scope for abatement of a claim only because the person that lodged the claim of legal representatives of the deceased person himself died. High Court Amendment Order 22 Rule 3 CPC contains a deeming provision which states that if within the time limited by law, no application had been filed under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before his death took place. This would mean that for the purpose of enforceability of the award, the claimant will be treated as alive when the award was passed and the execution is bound to proceed with the legal representative brought on record.

4. It is stated that the amount has been deposited by the insurer but the legal representatives of the deceased claimants have not appeared in court to claim the sum. I direct in the interest of justice that the Legal Services Authority through the Member Secretary of the District shall move an application under Order 22 Rule 4-A and the court will appoint a person to represent their estate and secure the amount already deposited by the insurer to the benefit of the representatives. If there are no legal representatives, the court will follow the due procedure as referred to in that provision. There

is no scope for the judgment debtor to contend that no recoveries could be made and plead abatement as a justification for non-payment. I had directed at the previous stage that the petitioner shall afford some adequate security for satisfying the decree. The petitioner shall offer the security to the satisfaction of the court which shall be sufficient for the Insurance Company to enforce immediately when an application is made under Order 22 Rule 4-A CPC and when the amount is permitted to be withdrawn on ascertainment of the legal heirs of the deceased claimant. The security shall be furnished within a period of 4 weeks from the date of receipt of copy of this order. The court will pass appropriate order after due notice to the Insurance Company which shall satisfy itself about the value of the property which is offered and the encumbrances or the existence otherwise on the property to ensure that the property that is offered as security will satisfy the claim of the insurer. If the security is not offered as directed, the court will issue further process in execution in favour of the Insurance Company against the petitioner.

5. The order already passed stands modified and the revision petitions are disposed of on the above terms.

(K.KANNAN)
JUDGE

07.12.2015
sanjeev