THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4649 of 2016

ORDER:

The 2nd judgment debtor/Insurance Company filed this civil revision petition, under Section 115 of the Code of Civil Procedure, 1908, having been aggrieved of the order, dated 24.06.2016, of the learned I Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Ongole, passed in E.P.No.23 of 2016 in M.V.O.P.No.331 of 2000.

2. I have heard the submissions of *Sri Naresh Byrapaneni*, learned standing counsel for the petitioner-2nd judgment debtor, and of *Sri Nuthalapati Krishna Murthy*, learned counsel for the 1st respondent/DHr, the claimant. I have perused the material record.

3. The facts which are necessary to be stated as a preface to this order, in brief, are as follows:

(A) The 1st respondent/Decree Holder (hereinafter, 'DHr') obtained a decree, dated 06.06.2005, against the revision petitioner/2nd judgment debtor ('hereinafter, '2nd JDr') in M.V.O.P.No.331 of 2010. The operative portion of the said decree reads as under:

> "1) That the Original Petition be and the same is hereby partly allowed.
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> 2) That the respondents 1 and 2 be and are hereby do pay a sum of Rs.5,47,000/- (Rupees five lakhs forty seven thousand only) towards compensation amount to the petitioner together with interest thereon at 9% per annum from the date of filing of the petition, i.e., from 19.04.2000 till the date of realization of award amount.
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> 3) that the Respondents 1 and 2 do also likewise to pay a sum of Rs.13,500/- towards costs of this petition to the

petitioner, bearing their (R1 and R2) own costs of this petition.

Costs of 1st Respondent:	Rs.Nil
Costs of 2nd Respondent:	Rs.Nil
Costs of 3rd Respondent:	Rs.Nil
Costs of 4th Respondent:	Rs.Nil

4) that the claim against the Respondents 3 and 4 be and is hereby dismissed.

5) That the Respondents 1 and 2 be and are hereby directed to deposit the award amount within sixty (60) days from the date of this order.

6) That in the event of deposit of award amount that the petitioner be and is hereby entitled for entire compensation awarded to him and permitted to withdraw a sum of Rs.50,000/- (Rupees fifty thousand only) from out of the compensation amount awarded.

7) That the balance compensation amount of petitioner shall be invested in fixed deposit for a period of three (3) years in a Nationalized Bank; and

8) that the Advocate's fee is fixed at Rs.2,000/-."

(B) The decree of this Court, dated 09.04.2014, in MACMA No.3027 of 2005 filed by the claimant/DHr reads as under;

"1. That the compensation awarded by the Court below be and hereby is enhanced from Rs.5,47,000/- to Rs.7,07,000/-.

2. That save as aforesaid the decree of the Lower Court shall stand confirmed in all other aspects and

3. That there will be no Order as to costs in this Civil Miscellaneous Appeal."

(C) Be it noted that the other MACMA No.2779 of 2005 filed by the 2nd JDr was dismissed, on 09.04.2014.

(D) Thereafter, the claimant/DHr filed the aforesaid EP for recovery of total EP amount of Rs.29,51,174/- besides decree costs and costs of execution. In the said EP, attachment of movables like printers, computers etcetera lying in the Divisional Office of the 2nd JDr was sought. The 2nd JDr filed a counter resisting the execution petition. Over ruling the objections in the counter of the 2nd JDr, the Court below passed the impugned order.

4. Aggrieved thereby, the 2nd JDr/Insurance Company preferred this revision.

5. Learned counsel for the 2nd JDr would contend as follows:

After the orders of this Court, dated 09.04.2014, in AAO 2779 of 2005 [MACMA No.2779 of 2005], the 2nd JDr deposited entire awarded amount of Rs.14,11,662/- after deducting TDS of 10% on the interest amount. The learned Judge of the Court below failed to properly consider the calculation in the calculation memo filed by the 2nd JDr. The Court below erred in considering the calculation in the calculation memo filed by the DHr wherein the principal amount deposited is treated as interest amount. The Court below while passing the order impugned in the execution petition failed to appreciate the contentions of the 2nd JDr and also the interim orders passed by this Court in the CMA, pursuant to which 50% of the awarded amount, which includes interests and costs was deposited. The learned Judge of the Court below ought to have rejected the calculation memo filed by the DHr by holding that the entire amount is deposited by the 2nd JDr towards full satisfaction of the Decree and that no further amount is due and payable by the 2nd JDr/insurance Company. The Court ought to have accepted the calculation memo filed by the 2nd judgment debtor/Insurance Company.

6. Learned counsel for the claimants/DHr while supporting the orders of the Court below stated that the calculation in the memo of the

DHr is only correct and that the calculation therein is made as per the judgment of the Apex Court, and that, therefore, the trial Court was justified in holding that the amount deposited by the 2nd JDr debtor is not towards full satisfaction and that the 2nd JDr is still liable to deposit the balance EP amount of Rs.2,95,172/- besides interest from 15.12.2015 till the date of payment of the said entire amount.

7. I have perused the material record including the calculation memos filed by both the parties.

8. There is no dispute with the legal proposition that the decree of a Motor Accidents Claims Tribunal has to be treated as a decree passed by a civil Court. There is also no dispute with the proposition that if the decree contains any specific provision regarding appropriation of amount, the same shall be final and binding on the parties. Since the dispute is about the execution of the money decree, i.e., the decree for recovery of compensation awarded in a motor vehicle accident claim petition, it is necessary to examine the principle of appropriation and its applicability to the facts of the present case, as there is no dispute with payments made and the dates of payments mentioned in the respective calculation memos of both the parties.

9. In Gurupreet Singh v. Union of India[1], the Constitution Bench of the Supreme Court considered the issue regarding execution of money decree, the principle of appropriation and its applicability. The said decision was followed by the Supreme Court in Bharat Heavy Electricals Limited v. R.S.Avthar Singh and Company[2]. In this decision, the Supreme Court culled down the principles as follows:

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1 (2006) 8 SCC 457
2 (2013) 1 SCC 243

> "(a) The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and cost and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.
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> (b) The legislative intent in enacting sub-rules 4 and 5 is clear to the pointer that interest should cease to run on the deposit made by the judgment debtor and notice given or on the amount being tendered outside the Court in the manner provided in Order XXI Rule 1 Sub-clause (b).
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> (c) If the payment made by the judgment debtor falls short of the decreed amount, the decree holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards cost and finally towards the principal amount due under the decree.
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> (d) Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter.
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> (e) In cases where there is a shortfall in deposit of the principal amount, the decree holder would be entitled to adjust interest and cost first and the balance towards the principal and beyond that the decree holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for re-appropriation.

10. Keeping in view the above principles, the facts of the present case and the correctness of the decision impugned have to be examined, as the ratio in the above decision is applicable to the facts of the case is not in dispute as both the learned counsel relied upon the ratio in the said decision. As per the well settled legal position, if the payment made by the judgment debtor falls short of the decretal amount, the decree-holder will be entitled to apply the general rule of appropriation

by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree. However, if any amount is appropriated towards the principal or if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. However, in case, where there is a shortfall in deposit of the principal amount, the decree-holder would be entitled to adjust interest and costs first and then balance towards the principal and beyond that the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for re-appropriation. The principle is that interest should cease to run on the deposit made by the judgment debtor towards principal or part of the principal amount and notice given or on the amount being tendered outside the Court. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.

11. In the case on hand, in the civil miscellaneous appeal filed by the insurance company in MACMA No.2779 of 2005, the Insurance company filed MACMAMP 4718 of 2005 seeking stay of execution of the decree of the Tribunal in OP No.331 of 2000 pending disposal of the appeal. This Court, on 21.10.2005, while admitting the appeal, granted interim stay of the impugned award/decree of the Tribunal, subject to the condition of the appellant/insurance company depositing half of the decretal amount awarded by the Tribunal including interest and costs, if any, within a period of six weeks from that day, duly giving credit to the amount, if any already deposited. Later, the claimants filed MACMAMP

No.5880 of 2005 requesting to vacate the said stay orders. This Court, by orders, dated 13.12.2005, held that the decree holder/claimant is entitled to half of the compensation amount that was already deposited by the insurance company and permitted the decree holder to withdraw the said amount and made the interim stay orders absolute while permitting the decree holder/claimant to withdraw the amount so deposited by the appellant/insurance company/2nd JDr. Thus, as per the stay orders, the 2nd JDr/insurance company deposited part of the principal amount, i.e., half of the principal amount with proportionate interest thereon and costs. It is also well settled that the general rule of appropriation towards a decretal amount was that any amount paid was to be adjusted strictly in accordance with the directions contained in the decree, which is binding on both the parties, and in the absence of such direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount, subject of course, to any agreement between the parties. Hence, the contention of the DHr that the amount deposited as per the stay orders of this Court has to be adjusted only towards interest and not towards principal does not merit consideration. In that view of the matter, the calculation adopted by the DHr in the calculation memo is not correct as the amount deposited pursuant to the stay orders of this Court is towards 50% of the principal amount besides proportionate interest and costs. Hence, on the 50% of the compensation amount, which is already deposited, the interest ceases to run from the date of the deposit and notice of such deposit given to the DHr/1st respondent herein. In that view of the matter, this Court finds that the learned Chairman of the Tribunal was not justified in accepting the calculation memo of the DHr and in not accepting the calculation memo of the 2nd JDr/insurance

Company. Therefore, this Court holds that the order impugned, which is not in accordance with the facts and the legal position obtaining, is unsustainable and warrants interference.

12. In the result, the Civil Revision Petition is allowed and the order impugned is set aside and the calculation in the calculation memo filed by the 2nd JDr/Insurance Company is accepted.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

03.10.2017
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