

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1229 of 2018**

1. National Insurance Company Limited, thorough its Divisional Manager, Divisional Office B-1 Taha Complex, 1st Floor, Vyapar, Vihar Road, Bilaspur, District Bilaspur, C.G.

---- Appellant**Versus**

1. Rajaram, S/o Agar Sai, aged 46 years,
2. Budhwariya, W/o Rajaram aged 40 yeasers.
3. Indrawati, D/o Rajaram aged 19 years.
4. Vijay Bahadur, S/o Rajaram, aged 26 years.

Respondent Nos. 1 to 4 all re R/o Village Belbahra, P.S. & Tahsil Manendragarh, District Korea, C.G.

5. Ramesh S/o Gorelal, aged 23 years, R/o Village Belbahra, P.S. Manendragarh, District Korea, C.G.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondents	:	None.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****05.12.2018**

1. Heard on admission.
2. This is insurer's appeal against the award dated 11.04.2018 passed by the 2nd Additional Motor Accidents Claims Tribunal, Manendragarh, District Korea, C.G. in claim case No.22/2016 awarding total compensation of Rs.5,18,600/-

with interest @ 08 per annum from the date of application till realization, fastening liability on the non-applicant no.1/Driver & Owner of the offending vehicle.

3. As per claim petition on 11.06.2015 Brijbhusan was going on motorcycle bearing no. CG16/CE/7596 as a pillion rider, which was being ridden by non-applicant no.1/respondent no.5 Ramesh in a rash and negligent manner. As the said vehicle got dashed against a stone, suffered severe injuries on various parts of his body including the head and died during the course of treatment in the hospital.
4. On claim petition being filed by the claimants under Section 166 of the Motor Vehicle Act, the Tribunal considering the evidence led by the parties awarded compensation as mentioned above.
5. Learned counsel for the appellant submits that though the Insurance Company has been exonerated of its liability by the Tribunal, however, the Tribunal has ordered for pay and recover which is not in accordance with law, therefore, the impugned award is liable to be modified to the extent that the Insurance Company is exonerated of any liability and it is non-applicant no.1 Driver & Owner of the offending vehicle, who is liable to pay compensation as assessed by the Tribunal to the claimant.
6. Heard learned counsel for the appellant and perused the material available on record.

7. It is not in dispute that on the date of accident, the deceased was sitting on the motorcycle as a pillion rider which was being ridden by non-applicant no.1, who is also the owner of the said vehicle. Further, it is not in dispute by the parties that the offending vehicle was duly insured with non-applicant no.2 / Insurance Company at the relevant time. The Tribunal considering the pleadings of the respective parties and the evidence adduced by them in support thereof, recorded a finding that on account of there being breach of policy conditions, the Insurance Company is not liable to pay compensation to the claimants. However, the Tribunal ordered that the Insurance Company shall first pay and compensation assessed by the Tribunal to the claimants and then recover the same from the non-applicant no.1/Owner.
8. The Hon'ble Supreme Court in a recent judgment in the matter of ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762*** has held that even in absence of liability to pay compensation of the insurance company, it has to satisfy the awards in respect of third party risks on the principle of “*pay and recover*”. In para-13 it was observed as under:
- “13.Assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants as the offending tractor was

duly insured, the insurer would be still liable to pay the compensation amount in the first instance with liberty to recover the same from the owner of the vehicle owner (respondent No.2), in light of the exposition in the case of *National Insurance Co. Ltd. Vs. Swaran Singh*, (2004) 3 SCC 297. In para 110 of the said decision, a three-Judge Bench of this Court observed thus: (SCC pp. 341-42)

"110. The summary of our findings to the various issues as raised in these petitions are as follows:

- (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by 1 (2004) 3 SCC 297 14 compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
- (ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.
- (iii) xxx
- (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.
- (v) – (ix) xxx xxx xxx xxx
- (x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the

insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

- (xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims." *(emphasis supplied)*

12. In the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***, the Hon'ble Supreme Court held as under:

"13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending

vehicle, i.e., (respondent No. 3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.

14. The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., [National Insurance Co. Ltd. vs. Baljit Kaur & Ors.](#), (2004) 2 SCC 1, [National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors.](#), (2004) 8 SCC 517, [National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors.](#), (2008) 8 SCC 246, [National Insurance Co. Ltd. vs. Roshan Lal](#), (2017) 4 SCC 803 and [National Insurance Co. Ltd. vs. Parvathneni & Anr.](#), (2009) 8 SCC 785.
15. This question also fell for consideration recently in [Manager, National Insurance Company Limited vs. Saju P. Paul & Anr.](#), (2013) 2 SCC 41 wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of [Section 147](#) of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".
16. R.M. Lodha, J. (as His Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under: (Saju P. Paul Case)

"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).

26. *The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 ([National Insurance Co. Ltd. vs. Saju P. Paul](#)), and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao(supra)."*

19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the

argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra."

9. Keeping in view the aforesaid judicial pronouncements of the Hon'ble Supreme Court, this Court finds no substance in the appeal filed by the Insurance, the same is accordingly dismissed at admission stage.

Sd/-
Gautam Chourdiya
Judge

Akhilesh