IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 21957-CII-2018 in/and
CR no. 5239 of 2018
Date of Decision: 01.11.2018

New India Assurance Company Limited .....Petitioner

versus

Sunita Aggarwal and another ....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Vinod Gupta, Advocate, for the petitioner.

Mr. Ashwani Arora, Advocate, for the respondents.

AMOL RATTAN SINGH, J. (Oral)

CM No. 21957-CII-2018

Both learned counsel for the parties are *ad idem* that the main petition itself be decided today, instead of just the application seeking dismissal of the petition.

In any case, if that application is to be decided, the petition itself has to be decided.

The application is thus disposed of as having been rendered infructuous.

CR No. 5239 of 2018

By this petition, the petitioner insurance company challenges the orders of the learned Motor Accident Claims Tribunal, Chandigarh, (hereinafter to be referred to as the Tribunal), dated 25.05.2018 and 21.07.2018.

By the first order, upon the "list of the property" in the shape of the account number of the insurance company-judgement debtor (petitioner herein), having been filed before the Tribunal and fresh calculations furnished by the respondent decree holders, a warrant of attachment of the said account, to the tune of Rs.79,10,515/- was ordered to be issued to the Branch Manager of the bank concerned (HDFC bank, Sector-17-C, Chandigarh).

Vide the order dated 21.07.2018, the Bank Manager was directed to remit the attached amount by August 14, 2018.

2. At the time when notice had been issued in this petition on August 16, 2018, learned counsel for the petitioner insurance company had relied upon Section 174 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as the Act), to submit that at best the executing Court (in this case the Tribunal) could have issued a certificate in the name of the Collector for recovery of the compensation awarded by it, with the Collector thereafter recovering the amount as an arrear of land revenue.

It had also been noticed at that stage that the appeal filed by the insurance company against the Award of the Tribunal, by which the respondents herein were awarded compensation for the unfortunate death of their son in a motor vehicle accident, had been appealed against before this Court by the insurance company by way of FAO no.5057 of 2017, in which judgment had been reserved by a co-ordinate Bench after hearing arguments.

One of the contentions of the insurance company, as per learned counsel appearing for it, had been that the vehicle stated to be involved in the accident, as was insured by the company, was not involved at all.

Upon the aforesaid contentions having been made, at that stage this Court had not issued notice to the respondents, observing that it was not necessary to call them to Court yet again in litigation, but in view of the contentions raised, while adjourning the matter to September 05, 2018, operation of the impugned orders had been stayed.

On September 05, learned counsel for the petitioner having stated that the appeal was still to be decided, and that the company had deposited Rs.38,00,000/- of the total compensation amount of Rs.1.06 crores awarded, notice had then be issued to the respondents, returnable on 16.11.2018, with the interim order continued.

3. Thereafter, the respondents appeared, by in fact filing an application dated 03.10.2018 (CM no.21957-CII of 2018), seeking dismissal of the revision petition, on the ground that this Court (co-ordinate Bench), vide its judgment dated 12.09.2018, had dismissed FAO no.5057 of 2017.

A copy of that judgment had been annexed with the application, whereby, not just the aforesaid appeal filed by the insurance company (petitioner herein), but also that of the respondents-claimants (FAO no.7396 of 2017), by which they had sought enhancement of the compensation awarded, was also dismissed. Thus the Award of the Tribunal, granting a compensation of Rs.1,05,38,432/- (alongwith interest @ 7½% per annum), was upheld.

That application of the respondents came up for hearing on October 12, 2018, with notice issued to the counsel for the non-applicant (petitioner insurance company), returnable on 26.10.2018.

Mr. Ashwani Arora, learned counsel for the respondents herein, having at that stage relied upon Rule 232 of the Chandigarh Motor Vehicles Rules, 1990, to contend that the Tribunal in fact had the jurisdiction to attach the property of the judgment debtor, Mr. Vinod Gupta, learned counsel for the petitioner-insurance company, had sought time to address arguments, with the matter consequently adjourned to 30.10.2018 and then on that day, it was adjourned to today.

4. As already noticed at the beginning of this judgment, while

disposing of the application seeking dismissal of the revision petition, i.e. CM no.21957-CII of 2018, both learned counsel having stated that the revision petition itself be decided, it has been taken up for disposal.

5. Learned counsel for the petitioner submits that even Rule 232 of the Chandigarh Motor Vehicles Rules, 1990, as has been relied upon by learned counsel for respondent-claimants, is actually *ultra vires* Section 174 of the Act, which provides that for realization of the amount of compensation due to the claimants, the Tribunal can at best issue a certificate in the name of the Collector concerned, who would then proceed to collect the amount as arrears of land revenue. Thus, the Tribunal could not have straightway ordered attachment of the bank account of the petitioner insurance company.

6. Learned counsel for the respondent-claimants, on the other hand, submits that even as per sub-section (3) of Section 168 of the aforesaid Act of 1988, the person who is required to pay any amount in terms of an Award passed by the Tribunal, is mandatorily required to deposit the amount within 30 days of the announcement of the Award by the Tribunal, in the manner that the Tribunal directs.

Hence, he submits that now putting the claimants to the harassment of having to approach the Collector to ensure that the compensation is realized as arrears of land revenue from the assets of the petitioner insurance company, is only prolonging their agony.

7. He also points to the order of the Tribunal passed on 14.08.2018, in which it is recorded that the Manager of the HDFC Bank Sector,17, Chandigarh (i.e. the Manager of the Bank where the petitioner company has its account), has deposited a demand draft of Rs. 79,10,515/-, and in such circumstances in any case to now direct that the said amount be not disbursed

to the claimants, is nothing but harassment and agony to them, with even the appeal filed by the petitioner-insurance company against the Award of the Tribunal having been dismissed, with no SLP filed thereafter.

That contention is refuted by Mr. Gupta, who submits that actually an SLP is in the process of being filed.

8. Having considered the arguments of learned counsel on both sides, it is first necessary to reproduce Section 174 of the Motor Vehicles Act, 1988, which reads as follows:

> **"174. Recovery of money from insurer as arrear of land revenue.** - Where any amount is due from any person under an award, the Claim Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue."

9. Undoubtedly, as per the aforesaid provision, upon an application made by a person in whose favour compensation has been awarded, for recovery of the said amount (if not deposited with the Tribunal by the person liable to deposit it), the Tribunal is to issue a certificate for the said amount to the Collector concerned, who is then to proceed to recover it in the same manner as an arrear of land revenue.

However, Rule 232 of the Chandigarh Motor Vehicles Rules, 1990 (published in the Chandigarh Administration Gazette (Extraordinary) dated February 08, 1990), reads as follows:

> "232. **The Code of Civil Procedure to apply in certain cases.-** The following provisions of the Fist Schedule to the Code of Civil Procedure, 1908, shall so for as may be apply to proceedings before the Claims Tribunal, namely, Order V. Rules 9 to 13 and 15 to 30; Order IX; Order XII,

> rule 3 to 10, Order XVI, Rules 2 to 21: Order XVII; Order XXI and order XXIII, Rule 1 to 3."

10. The rule making power conferred upon the State Government is contained in Section 176 of the Act of 1988, which reads as follows:

> "**176. Power of State Government to make rules.** – A State Government may make rules for the purpose of carrying into effect the provisions of Sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely :-
>
> (a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;
>
> (b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;
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> (c) the powers vested in a Civil Court which may be exercised by a Claims Tribunal;
>
> (d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and
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> (e) any other matter which is to be, or may be, prescribed."

Thus, the State Government (in this case the Chandigarh Administration, it being a Union Territory), has exercised the power given to it by promulgating the aforesaid rules, and Order XXI of the Code of Civil Procedure has been made 'applicable' to Motor Accident Claims Tribunals, for them to exercise all such powers as are conferred by the CPC under Order XXI.

However, as noticed, Mr.Gupta, learned counsel for the petitioner, has submitted that a rule cannot run contrary to the statute itself, under which the rule has been framed.

11. Even that contention, in my opinion, is untenable, in view of the

fact that Section 176 of the Act confers all powers as are necessary for giving effect to Sections 164 to Section 174 of the Act, upon a State Government, and clause (c) of Section 176 specifically empowers the State Government to vest in the Tribunal all powers vested in a Civil Court.

Naturally, therefore, execution proceedings as lie under Order XX1 for executing a decree issued by a Civil Court, would also vest in the Tribunal and the procedure therefore provided under Section 174, in the opinion of this Court, would be applicable only if no such power has been vested in the Tribunal by promulgation of specific rules in that regard by the State Government.

12. Once such jurisdiction is vested in the Tribunal, as is vested in a Civil Court, the procedure provided in Section 174 of the Act would be rendered otiose, with the Tribunal itself competent to ensure that the Award of the Tribunal is implemented in the same manner that a Civil Court would implement a decree issued by it, including by resorting to the provisions of Rule 43 etc. of Order XXI.

This would be especially so in the case of summary proceedings as are conducted under the Act, by which victims/next of kin of victims in the motor accident cases, need to be compensated as early as possible for any injuries caused to them/death of the deceased, by the person who has caused the motor accident or the insurance company which indemnifies the owner of the vehicle, the driver of which is found negligent in causing the accident.

13. Undoubtedly, in CR no.3248 of 2017 "**Bharti AXA General Insurance Co. Ltd. vs. Samsuddin and others**" (decided on 08.09.2017 by a co-ordinate Bench), the order impugned therein was stated to be similar to the order in the present petition, and was set aside, with the executing Court

directed to proceed in terms with the procedure contained in Section 174 of the Act of 1988.

In fact that judgment/order has been followed by this very Bench also in one or two similar petitions earlier filed, but neither in the aforesaid revision petition, i.e. CR no.3248 of 2017, nor in the cases decided by this Bench, were the provisions of Rule 232 of the Chandigarh Motor Vehicle Rules, 1990, brought to the notice of the Court, (nor in fact was the relevant rule applicable to the States of Punjab/Haryana brought to notice).

14. That being so, I see no reason to interfere with the impugned order, by which the bank account of the petitioner company has been ordered to be attached by the Tribunal, to satisfy the Award passed by it earlier, granting compensation to the respondents herein.

Hence, this petition is dismissed, especially as no order passed by the Supreme Court, in any SLP filed by the petitioner, staying disbursement of compensation to the claimants, has been produced in Court today.

15. However, even though this petition actually on the exercise of the jurisdiction under and the procedure contained in, Section 174 of the Act, however, the amount of compensation being large, i.e. Rs.1 crore plus, with the appeal of the petitioner insurance company (FAO no.5057 of 2017) having been dismissed by this Court (alongwith the appeal of the respondents), only on September 12, 2018, i.e. about one and a half months ago and learned counsel for the petitioner having stated that the company is in the process of filing an SLP, it is considered appropriate that actual disbursement thereof to the respondent-claimants be restrained for a period of two months from today, beyond the extent of Rs.5,00,000/-, unless any amount more than that has already been disbursed to them. Thus, any amount, unless already disbursed

beyond Rs.5,00,000/-, shall not be actually disbursed to the respondents for a period of 2 months from today, simply in order to ensure that in case any stay is imposed by the Supreme Court in any SLP filed within the said period, it does not become virtually impossible to recover the amount.

It is to be stated here that the amount of Rs.5,00,000/- ordered by this Court to be disbursed, is in view of the fact that the respondents are parents of a young man, 23 years old, who unfortunately died in an accident on 17.01.2016 and therefore, it is considered appropriate that they should get at least some 'succour' immediately, subject to, of course, any orders passed in further appeal against the Award of the Tribunal, and the judgment of this Court in FAO no.5057 of 2017.

(AMOL RATTAN SINGH)
JUDGE

November 01, 2018.
nitin/dharamvir

Whether speaking/reasoned : YES
Whether Reportable : YES