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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 178 of 2019

- National Insurance Company Limited, through the Divisional Manager, Mobin Mahal, G.E. Road, Raipur (C.G.)

  (Insurer- Tractor No. C.G.-07-D-2751)

---- Appellant/Non-applicant No.3

Versus

1. Neelkanth son of Heeraram Sahu, aged about 23 years, Caste-Sahu, resident of Village- Jamgaon, Post-Pahanda, Tahsil-Berla, District- Bemetara (C.G.)
   (Claimant)
2. Vishnu Sahu son of Fagwa Ram Sahu, aged about 46 years, resident of Village-Sorla, Post-Kusmi, Tahsil & P.S. Berla, District- Bemetara (C.G.)
   (Non-applicant No.1/Driver – Tractor No. C.G.-07-D-2751)
3. Smt. Kusum Jain wife of Ashok Kumar Jain, aged about 43 years, resident of Udya Society, Tatibandh, Raipur Tahsil & District-Raipur (C.G.) through Power of Attorney Holder-Ashok Jain son of Ramkumar Jain, Resident of Udya Society, Tatibandh, Raipur, Tahsil & District Raipur (C.G.) at present address- K.J. Krishi Farm, Hanuman Vatika, Kusmi, P.S. Berla, District-Bemetara (C.G.)
   (Non-applicant No.2/Owner- Tractor No. C.G.-07-D-2751)

---- Respondents

For Appellant	:	Shri Goutam Khetrapal, Advocate
For Respondents	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.02.2019

I.A. No. 1 of 2019:

1. This is an application for condonation of delay of 02 days in filing the appeal.

2. Heard.

3. For the reason mentioned in paras 2 to 4 of the application which is supported by affidavit, the same is allowed and the delay in filing the appeal is condoned.

4. Heard on admission.

5. Being aggrieved with the award dated 04.10.2018 passed in MACT No. 87 of 2017 by the Motor Accident Claims Tribunal, District Bemetara (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the

Motor Vehicles Act, 1988.

6. As against compensation of Rs.30,30,000/- claimed by the Claimant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for injuries sustained by him in the motor accident, the Tribunal awarded a total sum of Rs.1,30,000/- along with interest @ 9% per annum from the date of application till realization and fastened the liability upon the Appellant (non-applicants No. 3) in the first instance, with liberty to recover the same from the owner (non-applicant No.2).

7. Brief facts are that on 18.04.2017 the injured/Claimant- Neelkanth was going to Bemetara from Kusmi by his motorcycle alongwith one Lukesh Sahu who was the pillion rider of the motorcycle of the Claimant, when they reached near turn of village Kharra, non-applicant No.1- Vishnu Sahu, driver of the offending vehicle-Tractor bearing registration No. CG-07/D/2751, driving the said offending vehicle in a rash and negligent manner, dashed the motorcycle of Neelkanth. As a result thereof, Neelkanth and Lukesh Sahu sustained grievous injuries and they were taken to Government Hospital Berla. Thereafter, looking to the seriousness of Neelkanth, on advice given, he was taken to Chandulal Chandrakar Memorial Hospital, Bhilai, where he was hospitalized from 18.04.2017 to 27.04.2017.

8. Learned counsel for the Appellant/Insurance Company submits that the learned Claims Tribunal has wrongly and illegally directed the Insurance Company to pay the award and recover it from the owner of the offending vehicle. He further submits that as per verdict of Hon'ble Supreme Court only under Article 142 of the Constitution of India, the Supreme Court is having power to pass an order of pay and recover. He also submits that at the time of accident, the deceased was not having a driving licence to drive the Tractor.

9. Heard learned counsel for the Appellant/Insurance Company and perused the material available on record.

10. In ***Shamanna and Another*** Vs. ***Divisional Manager, Oriental Insurance Company Limited and Others, (2018) 9 SCC 650***, in para-7, the Supreme Court considered the decision in the matter of *National Insurance Co. Ltd.* v. *Swaran*

Singh, (2004) 3 SCC 297 in subsequent decision in the matter of *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut, (2007) 3 SCC 700* wherein the Supreme Court held that: (SCC p. 705, para 5)

> "*5.* The decision in *Swaran Singh case* has no application to cases other than third-party risks and in case of third-party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured."

11. Further, in *Shamanna* case (supra), the Hon'ble Supreme Court has observed in paras-11, 12, 13 & 14 as under:

> **11.** In the present case, to deny the benefit of "pay and recover", what seems to have substantially weighed with the High Court is the reference to larger Bench made by the two-Judge Bench in *National Insurance Co. Ltd.* v. *Parvathneni, (2009) 8 SCC 785* which doubted the correctness of the decisions which in exercise of jurisdiction under Article 142 of the Constitution of India directing insurance company to pay the compensation amount even though insurance company has no liability to pay. In *Parvathneni case*, the Supreme Court pointed out that Article 142 of the Constitution of India does not cover such type of cases and that: (SCC p. 786, para 5)
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> > "*5.* If the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle."
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> **12.** The above reference in *Parvathneni case* has been disposed of on 17-9-2013 (*National Insurance Co. Ltd.* v. *Parvathneni, (2018) 9 SCC 657*) by the three-Judge Bench Keeping the questions of law open to be decided in an appropriate case.
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> **13.** Since the reference to the larger Bench in *Parvathneni case, (2009) 8 SCC 785* has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in *Swaran Singh case* (supra) followed in *Laxmi Narain Dhut* (supra) and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in

Swaran Singh and *Laxmi Narain Dhut* cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment (Shamanna v. Laxman, 2016 SCC OnLine Kar 6928) of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.

14. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decisions in *Oriental Insurance Co. Ltd.* v. *Nanjappan, (2004) 13 SCC 224* wherein this Court held that: (SCC p. 226, para 8)

> "*8.* … For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."

12. In view of the judgment of Hon'ble Supreme Court in the matter of *Shamanna* (supra) and also in view of the decision in the matter of ***Manuara Khatun and others*** Vs. ***Rajesh Kumar Singh and others, (2017) 4 SCC 796***, this Court upholds the finding of the Tribunal that the Appellant/Insurance Company (non-applicant No.3) to pay the amount awarded by the Tribunal to the Claimant in first instance, with liberty to recover the same from owner (non-applicant No.2) of the offending vehicle in accordance with law. Accordingly, this appeal is liable to be and is dismissed at the motion stage with no order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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