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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.290 of 2019

The Oriental Insurance Co. Ltd., Through – Divisional Office, Itwari Bazar, Naya Ganj, Raigarh, District-Raigarh (CG)

--- Petitioner

Versus

1. Smt. Kheermati Nishad Wd/o Late Ganga Ram Nishad, Aged about 42 years, R/o Village Gaare, P.S. & Tahsil – Tamnar, District – Raigarh (CG)
2. Vikram Das S/o Trilochan Das Mahant Aged about 27 years, R/o Village Gaare, P.S. & Tahsil -Tamnar, District – Raigarh (CG)

--- Respondents

For Petitioner:	Mr.A.P.Sharma, Advocate on behalf of Mr.H.P.Agrawal, Advocate
For Respondent No.1:	Mr.M.K.Sinha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01/07/2019

1. This writ petition is directed against the order dated 12.12.2018 passed by the Motor Accident Claims Tribunal, Raigarh in Execution Claim Case No.7/2014, whereby the Claims Tribunal has held the petitioner/Insurance Company is liable to satisfy the award though the petitioner-Insurance Company has been exonerated from its liability by award dated 24.3.2014.

2. In a claim petition preferred by Smt. Kheermati Nishad, learned Claims Tribunal after hearing both the parties on 24.3.2014 passed an award of ₹ 7,22,000/- in favour of the claimant/respondent No.1 and exonerated the petitioner-Insurance Company, while fastening liability on respondent No.2/owner of vehicle and appeal preferred

by respondent No.2 being MAC No.290/2015 before this Court was dismissed as withdrawn on 14.1.2016. When respondent No.1 filed execution case, the Claims Tribunal by its impugned order held that the Insurance Company would be liable to satisfy the award in view of the law laid down by this Court in the matter of **United India Insurance Company Limited v. Smt. Pramila Devi and others**[1] and **General Manager, United India Insurance Company Limited v. M. Laxmi and others**[2] and directed the Insurance Company to satisfy the award, against which, this writ petition has been preferred.

3. Mr.A.P.Sharma, learned counsel appearing for the petitioner, would submit that the Claims Tribunal is absolutely unjustified in fastening the liability on the petitioner/Insurance Company as the Claims Tribunal has already exonerated him from its liability to satisfy the award, which has become final as the owner's appeal has already been dismissed as withdrawn.

4. Mr.M.K.Sinha, learned counsel appearing for respondent No.1, would support the impugned award.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

6. On 24.3.2014 the Claims Tribunal fastened the liability upon the owner and the owner's appeal has already been dismissed as withdrawn by this Court on 14.1.2016. Nothing further has been brought on record that liability has been fastened by the Claims Tribunal/Executing Court upon the Insurance Company.

1 2009(2) CGLJ 76
2 2009(1) T.S.C.06(SC)

7. It is settled law that the Executing Court cannot go beyond the decree and he has to execute the decree as it is.

8. In the matter of **The Bank of Bihar Ltd. v. Srangdhr Singh and another**[3], the Privy Council has clearly held that an execution Court cannot go behind the decree and question its correctness, but also held that when the decree is silent, and gives no indication as to what property should be sold in execution, it is permissible for the Court to look into the judgment in order to find out whether upon any issue properly raised and determined as between the parties interested.

9. The Supreme Court in the matter of **TCI Finance Ltd. Vs. Calcutta Medical Centre Ltd. And another**[4] had held that the executing court cannot go beyond the decree. It is the settled position in law which flows from Section 38 of the CPC; except when the decree is a nullity or is without jurisdiction.

10. The Supreme Court in the matter of **Shivshankar Gurgar Vs. Dilip**[5] following its earlier judgment in the matter of **Deepa Bhargava Vs. Mahesh Bhargava**[6], has held that the executing court neither can go beyond the decree nor it has jurisdiction to modify the decree, it has to execute the decree as it is. Relevant paragraph of the report states as under:-

> "......It is a settled principle of law that the executing court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. This Court in Deepa Bhargava v. Mahesh Bhargava (supra) held thus:-

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3 AIR 1949 Privy Council 8
4 (2005) 8 SCC 41
5 (2014) 2 SCC 465
6 (2009) 2 SCC 294

> "9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent judgment-debtors did not act in terms thereof. It has no jurisdiction to modify a decree. It must execute the decree as it is......"

11. In the instant case, the Executing Court has gone beyond the decree and fastened the liability upon the petitioner/Insurance Company, which cannot be approved in light of settled legal position.

12. Accordingly, the impugned order dated 12.12.2018 passed by the Motor Accident Claims Tribunal, Raigarh in Execution Claim Case No.7/2014 is set aside. However, the claimant/respondent No.1 is at liberty to execute the award against the owner of the vehicle/respondent No.2 herein.

13. The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-