

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP227 No. 747 of 2019**

1. Smt. Jyoti Gendre, W/o Late Vishnu Gendre, Aged about 24 years.
2. Ganesh Gendre, S/o Late Vishnu Gendre, Aged about 03 years.
3. Ku. Neelam Gendre, Aged about 01 year, D/o Late Vishnu Gendre.

[Petitioner No. 2 and 3 being minor on behalf of through their legal guardian mother petitioner No. 1 Smt. Jyoti Gendre, W/o Late Vishnu Gendre]

4. Puran Gendre, S/o Ramta Gendre, Aged about 45 years.
5. Smt. Durjan Bai Gendre, W/o Shri Puran Gendre, Aged about 42 years.

All R/o Near Naiyyar Poultry Farm, Telibandha Raipur, Police Station Telibandha, Raipur, District Raipur, Chhattisgarh.

---Petitioners/Decree holders

Versus

1. Radheshyam Singh, S/o Late Madan Singh, Aged about 30 years, R/o Gurmukhsingh Nagar, New Rajendra Nagar, Post Office Raipur, Police Station New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh.
2. Anil Kumar Garg, S/o Jagdish Garg, Aged about 46 years, R/o Telghani Naka, In front of Gujarati Dharmshala, Raipur, District Raipur, Chhattisgarh.

3. The Bajaj Allianz General Insurance Company Limited, through Divisional Manager, Divisional Office, Vidhansabha Raod, Pandri, Raipur, District Raipur, Chhattisgarh.

--- Respondents/Judgment debtors

For Petitioners : Mr. Rajkumar Pali, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

04/10/2019

1. Petitioners herein are claimants in whose favour award dated 22/04/2014 has been passed by learned Claims Tribunal for a sum of ₹ 9,14,600/- which is payable by respondent No. 3 i.e. Insurance Company who will recover the amount from respondents No. 1 and 2 i.e. driver and owner of the vehicle. Learned Claims Tribunal further directed that respondents No. 1 and 2 herein i.e. driver and owner would furnish security for the payment of the compensation amount to the Insurance Company. In furtherance of the awarded amount, a sum of ₹ 10,15,631/- has already been deposited by the Insurance Company but it has not yet been disbursed to the claimants for want of security which has not been furnished by the

driver and owner as directed by learned Claims Tribunal.

2. Petitioners filed an application under Section 151 of the CPC for releasing of the compensation amount, but learned Claims Tribunal rejected the said application by order impugned dated 13/11/2018 against which this writ petition under Article 227 of the Constitution of India has been preferred by them.
3. Mr. Rajkumar Pali, learned counsel for the petitioners would submit that the Claims Tribunal is absolutely unjustified in rejecting the application filed by the petitioners as their near relative Vishnu Gendre died on 08/01/2012 and it has been more than 7 years but not a single penny has been paid to the claimants and the Claims Tribunal has closed his eyes by rejecting their application for releasing the compensation amount.
4. I have heard learned counsel for the petitioner at length.
5. It appears from the record that learned Claims Tribunal directed the Insurance Company to satisfy the decree and further directed to recover the compensation amount from respondents

No. 1 and 2 herein i.e. driver and owner who would have to furnish security for the entire amount which the Insurance Company will pay to the claimants. The offending vehicle has already been attached as a part of the security.

6. The Supreme Court, in the matter of ***Oriental Insurance Co. Ltd. Vs. Nanjappan and others***¹, has held as under :-

"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. 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 concerned Executing Court 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. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle

¹ (2004) 13 SCC 224

shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs. "

7. Reverting to the facts of the present case, it is quite vivid from the above observations that learned Claims Tribunal has failed to take proper steps for making payment of the compensation amount awarded to the claimants by award dated 22/04/2014. It is unfortunate that though the awarded amount has been deposited in the account by the Insurance Company but still after more than 7 years from the date of death, the amount has not been disbursed to the claimants and learned Claims Tribunal has further rejected the application filed by the petitioners without taking proper steps to get respondents No. 1 and 2 served.

8. Learned Claims Tribunal is directed to ensure the presence of respondents No. 1 and 2 herein by all legally permissible modes and notices be served to them by special messenger within two weeks from today and then to obtain the undertaking as directed earlier and disburse the awarded amount

as per award dated 22/04/2014 to the claimants within further two weeks without fail. If need arises, Claims Tribunal, Raipur will hold sitting during the Dussehra holidays in order to ensure the compliance of this order.

9. With the aforesaid direction, this writ petition stands disposed of. No order as to cost(s).

10. A copy of this order be sent to the concerned Claims Tribunal through the Registrar General by e-mail/fax by today itself.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet