

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.1382 OF 2019

(Shankar Nimbaji Khanzode and another .vs. Himmatsing Narayansing
Tomar and Others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.Alok Daga, Advocate for the appellant.

CORAM : VINAY JOSHI, J.

DATE : 14.11.2019.

Heard the learned Counsel for the
appellant on the issue involved in the matter.

Learned Counsel for the
respondent is absent.

Limited challenge is raised by the
appellants about condition no.5 incorporated
in the final order passed by the learned
Tribunal while deciding M.A.C.P. No.15 of
2012. Though in appeal memo the appellant
is seeking to quash condition nos. 5, 8 and 9
of the final order, at the time of hearing,
appellant has restricted his prayer to the
extent of clause no.5 of the final order.

Initially, the appellants had
preferred a Claim to the Tribunal on account
of death of one Padmabai occurred in
vehicular accident dt.18.12.2011. The
Tribunal, having regard to the evidence on
record, has partially allowed the claim
thereby directing the respondents therein to

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jointly and severally pay total compensation to the tune of Rs.3,61,000/-. The learned Tribunal, vide clause no.5 of the final order, has directed the Insurance Company to satisfy the Award at first and then to recover the amount of compensation from owner of the vehicle. However, the said clause further provides that, the amount shall not be released to the claimants till respondent no.1 (owner of the vehicle) furnishes bank guarantee. For the sake of convenience, clause no.5 of the operative order is reproduced hereinbelow.

“5.The respondent No.3 shall satisfy the award first thereafter, may recover the amount of compensation so deposited with the tribunal from the respondent No.1 (registered owner of the offending vehicle) by filing execution of this award and not by separate proceeding. Till the respondent No.1 furnishes a security or bank guarantee or surety of the amount so deposited by the respondent No.3 with the Tribunal, the amount of compensation deposited by it shall not be released to the petitioners.”

It is informed that, in the Executing Petition, the Insurer has already deposited the compensation amount, but, due to the rider inserted in clause 5 of the operative order, the petitioner is unable to withdraw

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the amount. The reason obvious that the owner has not furnished security/surety which made the claimants disabled from receiving the amount. One can easily foresee that owner may not furnish security. In that case, claimants would not get compensation at all despite the order.

The very object of “pay and recover orders” is to meet the exigency of providing immediate assistance to the claimants and thereafter, Insurance Company is liable to pay first and then recover the same. Such order are passed when primarily there is existence of Insurance coverage, but, due to breach of policy condition, liability is conditionally imposed.

As a matter of fact, said insertion of rider imposing condition for withdrawal itself frustrates the very purpose of “pay and recovery orders” which are passed for the benefit of claimants. The very object of beneficial legislation is to provide financial assistance to the victim of road accident. Obviously, it is not within the control of the claimants to comply the condition; meaning thereby, they are helpless, though entitled for claim. As such, the impugned condition is totally uncalled for; rather against the spirit of beneficial legislation hence required to be set aside. In view of that, the appeal calls for interference to that extent. Hence, the following order.

The appeal stands allowed.

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The part of clause 5 of the final order, which is re-produced hereinbelow, is set aside.

“.....Till the respondent No.1 furnishes a security or bank guarantee or surety of the amount so deposited by the respondent No.3 with the Tribunal, the amount of compensation deposited by it shall not be released to the petitioners.”

Rest of the final order will stand as it is. The appeal is disposed accordingly. No order as to costs.

JUDGE

jaiswal