**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**202** **CR no.3570 of 2015 (O&M)**
**Date of Decision: 15.03.2019**

Tamanna Sharma ...Petitioner

Vs.

New India Insurance Co. Ltd. & others ...Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present:- Mr. Puneet Jindal, Senior Advocate with
Mr. Tajinder singh, Advocate, for the petitioner.
Mr. S.S. Sidhu, Advocate, for respondent no.1.

**Amol Rattan Singh, J (Oral)**

By this petition, the petitioner challenges the order of the learned Motor Accident Claims Tribunal, Chandigarh (in execution proceedings), dated 16.12.2011, as also the recovery certificates ordered to be issued by that Court on 12.12.2013 and 21.03.2015.

Vide the impugned order dated 16.12.2011 (passed on the objections filed by the petitioner herein who is stated to be the legal heir of judgment debtor no.2, i.e. Sukhdev Singh, owner of the vehicle involved in the accident), it has been held that the insurance company would have the right to recover the compensation awarded by the Tribunal, not necessarily by filing a separate suit for that purpose but even in execution proceedings ongoing in the Tribunal.

The aforesaid was held on a contention raised by the petitioner, to the effect that any compensation sought to be recovered from the owner of the vehicle or from his legal heirs, could only be by way of a separate suit and not in execution proceedings.

To hold as above, the learned executing court relied upon a Supreme Court judgment in **<u>Oriental Insurance Co. Ltd. v. Nanjappan and others</u>**, AIR 2004 SC 1630, from which learned counsel for the respondent has referred to paragraph 8 before this court, which reads 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 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 Execution Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation 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."

Though it would be a moot point as to what has been held in the aforesaid judgment constitutes *ratio decidendi* binding on all other courts or whether it was in exercise of jurisdiction by the Supreme Court under Article 142 of the Constitution, yet no law to the contrary having been shown, I see no reason to interfere with that finding in the impugned order.

As regards the second issue however, Mr. Jindal, learned Senior Counsel appearing for the petitioner, submits that the petitioner is the married daughter of the aforesaid judgment debtor, Sukhdev Singh, with her contention being that she did not inherit any property from her father and therefore in terms of Section 50 of the Code of Civil Procedure, 1908, she cannot be held liable to pay the compensation which the respondent-insurance company is seeking to recover from her as the legal representative of the owner of the vehicle insured.

Section 50 of the CPC reads as under:-

> "50. Legal representative (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."

Thus, sub-section (2) of Section 50 specifically stipulates that the legal representative of a deceased judgment debtor is liable only to the extent of the property of the deceased as has come to his/her legal representative and has not been duly disposed of, and that for the purpose of ascertaining such liability, the 'executing court' may even compel the legal representative to produce accounts to substantiate that she/he actually did not inherit anything from the deceased.

Mr. Jindal has further submits that though the aforesaid contention has been duly noticed in paragraph 3 of the impugned order dated 16.12.2011, however no finding whatsoever has been recorded on that contention.

Learned counsel for the respondent-insurance company naturally could not dispute that factual aspect.

That being so, this petition is allowed to the extent that that part of the impugned order is set aside, as holds the insurance company entitled to recover from the petitioner the compensation awarded by the Tribunal to the claimants. The recovery certificates issued [Annexure P-4 (colly)] are also quashed.

On that limited issue, the matter is remanded to the Tribunal, which would proceed in terms of what is stipulated in Section 50 of the CPC and come to its own finding as regards the liability of the petitioner to reimburse the compensation paid by the respondent-insurance company to the claimants; i.e. as to whether she actually inherited the estate or part thereof, of her late father Sukhdev Sharma, who was owner of the vehicle involved in the accident and insured by the respondent-insurance company.

The petition is thus partly allowed to the aforesaid extent.

**15.03.2019** **(Amol Rattan Singh)**
vcgarg/dinesh **Judge**

**Whether speaking/reasoned : Yes**
**Whether reportable : Yes**