

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 101

Case No. : C. R. No. 8123 of 2014

Date of Decision : May 22, 2019

Dharam Pal (since deceased)
through his LRs

.... Petitioners

vs.

National Insurance Co. Ltd.

.... Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. N. C. Kinra, Advocate
for the petitioners.

Mr. Harsh Aggarwal, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 15.11.2014 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short – the Tribunal), through which conditional warrants of arrest were ordered to be issued qua the petitioners.

The facts, in brief, which are required to be noticed are that on 05.11.2008, Rikhi Ram (now deceased) was going on a bicycle from his Village Masana Rangran towards Village Kheri Lakha Singh. His son Gulshan Kumar was following him on a separate bicycle. At about 09:30 PM, when they reached near the fields of Balkar Singh on Mustafabad-Radaur road, a motorcycle bearing registration No. HR-02-T-2594 (for short

– the offending vehicle), being driven by Dharam Pal, struck against Rikhi Ram's bicycle, as a result of which, he sustained grievous injuries resulting in his death. Rikhi Ram's LRs filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal, which, after concluding that the offending vehicle was being driven by Dharam Pal in a rash and negligent manner, assessed the payable compensation. While the matter was pending before the Tribunal, Dharam Pal died and his legal heirs were brought on record. The Tribunal directed the Insurance Company to pay the claimants the compensation assessed by it and for the reason that it found Dharam Pal's license to be fake, the Insurance Company was granted the right to recover the compensation paid by it to the claimants from the LRs of Dharam Pal.

After the Insurance Company had paid the assessed compensation to the claimants, it sought to recover the same from the LRs of Dharam Pal but when they refused to make such payment, an execution petition was filed. The LRs of Dharam Pal, who are the petitioners before this Court, filed objections before the Executing Court. They inter alia submitted that the widow of Dharam Pal namely Rani Devi @ Pani Devi had received retiral-cum-pensionary benefits of Dharam Pal but had spent the same on the marriages of her daughters. It was further submitted that none of the LRs owned any property except Rani Devi @ Pani Devi, who owned one residential house, which according to the petitioners, as per Section 60 (ccc) CPC could not be sold to discharge their debt.

While such objections were pending, the Insurance Company

filed an application seeking arrest of the petitioners for having not discharged their legal debt. Through the impugned order, conditional warrants of arrest were ordered to be issued by the Executing Court against all the petitioners. Such order is the subject matter of challenge in the present proceedings.

Notice in the petition was issued and the arrest of the petitioners was stayed. While the present petition was pending before this Court, the objections filed by the petitioners were rejected by the Executing Court, against which, two petitions were filed by the petitioners before this Court being CR No. 5837 of 2018 – Sona Devi vs. National Insurance Co. Ltd. and others and CR No. 6369 of 2018 – Raj Kumar vs. National Insurance Co. Ltd. and others. These petitions, through order dated 13.05.2019, were allowed by a Co-ordinate Bench as this Court was of the view that while deciding the objections filed by the petitioners, the following issues were required to be framed by the Executing Court :-

1. *Whether the petitioner's property sought to be sold by the respondent Insurance Company to discharge the debt was the sole residential house of LRs of Dharam Pal and*
2. *Whether Sona Devi – sister of deceased Dharam Pal had any share in the said house.*

At the time of disposal of the aforesaid petition(s), learned counsel appearing on behalf of the Insurance Company had submitted that in view of the fact that the objections filed by the petitioners were now required to be decided after framing of the aforesaid issues, the present revision petition would be rendered infructuous. On such statement, the

Court directed the listing of this petition and in pursuance of such order, the matter has been listed today.

In view of the above statement made by learned counsel appearing on behalf of the Insurance Company as also for the reason that the petitioners should not be arrested before their objections are decided in accordance with the order passed by this Court on 13.05.2019 in CR No. 5837 of 2018 – Sona Devi vs. National Insurance Co. Ltd. and others and CR No. 6369 of 2018 – Raj Kumar vs. National Insurance Co. Ltd. and others, the impugned order is set aside.

However, in case the petitioners' objections are dismissed, the Executing Court would be at liberty to proceed against the petitioners in accordance with law.

The present petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

May 22, 2019
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.