NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 580 of 2019

1. Bunda Bai, W/o. Late Santram Yadav, aged about 50 years,
2. Bharat Yadav, S/o. Late Santram Yadav, aged about 32 years,
3. Tarak Yadav, S/o. Late Santram Yadav, aged about 30 years,

   Respondent No.1 to 3 are R/o. Village Chicha, P.O. Litiya, P.S. Bori, District – Durg (C.G.)
4. Kumari Bai, W/o. Bhagwat Yadav, aged about 28 years, R/o. Village Dalli, P.S. Dhumka, District- Rajnandgaon, Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Petitioners

Versus

1. Goutriha (now dead), through LR

   (1.A.) Ganesh Sahu, S/o. Late Goutriha, aged about 28 years,

   (1.B.) Deepak Sahu, S/o. Late Goutriha, aged about 25 years

   Both are R/o Durga Choura, Near Anna Shop, Shakti Nagar, Ward No. 18, Shakti Nagar, Durg, Tehsil and District- Durg, Chhattisgarh.
2. Bajaj Allianz General Insurance Company Limited, Havin Its Office At Shivmohan Bhawan, Vidhan Sabha Raod, Pandri, Raipur, Tehsil and District- Raipur, Chhattisgarh.

-----Respondents

For Petitioners : Mr. Pawan Kesharwani & Mr. Anmol Sharma, Advocates

For Respondent No.2 : Mr. Abhishek Sinha and Mr. Ghanshyam Patel, Advocates

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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/11/2020

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 22.05.2019, passed by the Sixth Additional District Judge, Durg, District – Durg, passed in Claim Execution Case No.15/2008.

2. It is submitted by the counsel for the petitioners that the petitioners are dependent of the deceased Sant Ram Yadav, who died in a motor accident. The claim case No.15/06 was preferred by them, on which award dated 09.09.2008 was passed in favour of the petitioners. The learned Tribunal awarded compensation of Rs.3,06,554/- to the petitioners. As the insurance company respondent No.2 was not held liable, therefore, it was ordered that compensation shall be paid by respondent No.2 and recovered from respondent No.1. The Miscellaneous Appeal (C) No. 1467/2008 was preferred by the respondent No.2, which was dismissed vide order dated 04.08.2011.

3. The execution case was filed by the petitioners in which the respondent No.2 has made compliance of the order against it and deposited the amount of compensation in the Tribunal. The petitioners then filed an application for release of the amount. This application was opposed by the respondent No.2. The impugned order was passed, in which, it was held that the direction of the High Court in order dated 04.08.2011 in M.A.(C) No. 1467/2008 in pursuance of the judgment of the Supreme Court in case of **Oriental Insurance Company Limited Vs. Nanjappan & Ors.**, reported in **2004 AIR SCW 952** have not been complied with, therefore, the amount can not be released in favour of the petitioners.

4. It is submitted by the counsel for the petitioners that more than 11 years has passed even then the petitioners have not received

compensation because of which they are suffering. The petitioners can not be held responsible for the non-compliance of the conditions as the respondent No.1 has failed to appear and furnish the security for payment of the amount to the petitioners. The original owner of the vehicle has expired and his legal representatives are not turning up despite notices to them, therefore, in such conditions, the learned Tribunal should have released the amount in favour of the petitioners. It is prayed that the impugned order be quashed and relief be granted in favour of the petitioners.

5. Legal representatives of the respondent No.1 have been served with notices but they have not appeared and there is no representation on their behalf.

6. Counsel for the respondent No.2 submits that the award was passed in favour of the petitioners with specific direction to the respondent No.2 to make payment and do the recovery of the same from owner of the vehicle. The petitioners had earlier filed an application for release of the amount, which was dismissed by order dated 04.08.2014, subsequent to which application was filed for the second time, which has been decided by the impugned order. In the order of the High Court in M.A.(C) No. 1467/2008, there is specific direction to comply with the directions of Supreme Court given in **Oriental Insurance Company Limited Vs. Nanjappan (supra)** that before releasing the amount that the owner of the vehicle shall be required to

furnish security for his entire amount, which the insurer will pay to the claimants and the offending vehicle is also be attached as part of the security. Due to the failure of the appearance of the owner and legal representatives, the security has not been furnished, therefore, the respondent No.2 has objection in release of the amount and this objection has been rightly entertained by the learned Tribunal. The reliance has been placed on the judgment of Supreme Court in case of **Shamanna & Anr. Vs. Divisional Manager, Oriental Insurance Company Limited and Ors,** reported in **(2018) 9 SCC 650**, in which the Supreme Court has reaffirmed the judgment of **Oriental Insurance Company Ltd. Vs. Nanjappan (supra)**. Therefore, the petition is without any substance, which may be dismissed.

7. I have heard the learned counsel for the parties and perused the documents placed on record.

8. As the specific direction of the Supreme Court for realization of the compensation amount to a claimant is given in Para -8 of the judgment in **Oriental Insurance Company Limited Vs. Nanjappan & Ors (supra),** which is 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 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."

9. As it appears that respondent No.2 has complied by depositing the amount of compensation in the Tribunal, but the specific condition for release of the amount regarding furnishing of security of the insured owner, has not been possible because of death of insured owner and because of non-representation of his legal representatives, the judgment above mentioned, and the judgment in **Oriental Insurance Company Ltd. Vs. Nanjappan's** case (supra) does not speak of any other method to be adopted in case of non-appearance of the insured owner.

The other direction issued in this judgment are regarding the mode of realization of the amount from owner of the vehicle for insurer.

10. As it appears that direction issued in the judgment mentioned herein above are to safeguard the interest of the insurer and there is nothing said about the method to be adopted in case of default of insured in furnishing security for the release of the compensation amount paid by the insurer in favour of the claimants. Hence, in such circumstances, it was not appropriate for the Tribunal to release the amount in favour of the petitioners without fulfillment of the conditions as laid down by the direction given by the Supreme Court. Therefore, I am of this view that the learned Tribunal has not committed any error in passing the order refusing to release the amount deposited with it. The finding in the award is very clear that respondent No.2 was not liable on account of breach of policy conditions. Hence, primary liability is fixed upon the insured owner of the vehicle. The petitioners are left with no other option but to proceed in the execution by making prayer before the Tribunal for recovery of the award from the legal representatives of the insured owner in accordance with Section 174 of Motor Vehicle Act, 1998. Hence, with these observations, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram