

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

Writ Petition No. 547 of 2020

Veena wd/o Sanjay Dongre and others Vs. National Insurance Company Ltd.
and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.P Kariya, Advocate for the petitioners

CORAM : MANISH PITALE, J.

DATED : OCTOBER 22, 2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this writ petition, the petitioners are constrained to challenge order dated 12/12/2019, passed by the Motor Accident Claims Tribunal at Nagpur.

3. The grievance of the petitioner is that despite the Tribunal holding in their favour on their Claim Petition and the Award passed by the Tribunal being confirmed by this Court by dismissal of appeal filed by respondent No.1 – Insurance Company, even till date, they have not been able to enjoy the fruits of the Award that was passed in their favour.

4. Notice was issued in this writ petition in which the respondents have been served, but, they have chosen to remain absent.

5. As per the documents on record, it cannot be disputed that the Tribunal in the present case allowed the Claim Petition of the petitioners partly and directed payment of compensation to them to the tune of Rs.11,03,000/-, along with 8% interest from the date of the Claim Petition. It was specifically directed in the Award itself that the respondent No.1 would satisfy the Award and recover the amount from the owner in execution proceedings. The record also shows that First Appeal No. 2 of 2006 filed by respondent No.1 – Insurance Company against the aforesaid Award of the Tribunal was ultimately dismissed by this Court on 20/07/2017 and the Award of the Tribunal stood confirmed. While dismissing the appeal, this Court gave the following directions in the context of the Insurance Company recovering the amount in execution proceedings from the original owner :

Before the release of the amount of compensation deposited by the appellant in this Court to the respondent claimant, the owner of the offending vehicle-respondent shall furnish security for the entire amount which the insured will pay to the claimant.

If necessity arises, the executing Court shall take assistance of the concerned Regional Transport Authority for attachment of the vehicle.

The Executing Court shall pass appropriate order in accordance with the law as to the manner in which the owner of the vehicle shall make payment of the insurer.

In case there is any default, it shall be open to the executing Court to direct realisation of the amount by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle.

In this case, considering the quantum

involved, it is left to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

5. The respondent No.1 – Insurance Company did not initiate any execution proceedings due to which the petitioners were constrained to initiate such proceedings. It is relevant that by a subsequent order dated 04/06/2019, this Court directed that amount deposited by respondent No.1 – Insurance Company in this Court to be remitted to the Tribunal. There is no dispute about the fact that the amount stood remitted to the Tribunal.

6. A perusal of the impugned order passed by the Tribunal shows that in the meanwhile, the owner of the vehicle passed away and his legal representatives were on record and that proceedings were required to be undertaken by respondent No.1 – Insurance Company for recovery of amount from the legal representatives of the original owner, by initiating appropriate proceedings in respect of properties inherited by them from the original owner. It was found that such properties were located in Gondia. It is in this context that the impugned order was passed by the Tribunal, directing that the Award / decree of the Tribunal be transferred for execution to the District Court, Gondia, which exercises jurisdiction of the Motor Accident Claims Tribunal, so as to comply with the order of this Court. The petitioners are aggrieved by the said direction as their main concern is of disbursement of the compensation amount to them.

7. As noted above, the respondent chose to remain absent before this Court despite service of notice in the present writ petition.

8. Although the impugned order of the Tribunal in the context of steps that would be required to be taken by respondent No.1 – Insurance Company, may be correct, but, it is surprising that the Tribunal has failed to appreciate the harassment suffered by the petitioners for a long period of time. The Claim Petition was filed by the petitioners way back in the year 2001 in the context of an accident that took place on 07/11/2000. The Tribunal passed its judgment and Award, as far back as on 22/08/2005 and till date the petitioners have not been able to receive the amount of compensation granted to them. This Court dismissed the appeal filed by the respondent No.1 – Insurance Company more than three years ago on 20/07/2017 and yet the petitioners have not received the compensation amount. It is perhaps because of certain directions given by this Court in the context of the steps required to be taken by the Insurance Company in execution proceedings for recovery of amount from the owner, that the matter has been languishing till date. The Tribunal at Nagpur failed to appreciate this aspect of the matter while passing the impugned order. It was expected to first ensure that the compensation amount, which stood remitted from this Court to the Tribunal was disbursed forthwith to the petitioners. Sadly, this aspect was ignored by the Tribunal while passing the impugned order.

9. It is an admitted position that the respondent No.1 – Insurance Company has not challenged the impugned order and the directions given therein pertaining to the steps required to be taken by the Insurance Company for recovery of the amount from the legal representatives of the original owner of the vehicle. To that extent, this Court need not interfere in the impugned order, but, the same needs to be modified by adding a specific direction

that notwithstanding transfer of the execution proceedings to the District Court at Gondia, the Tribunal at Nagpur shall release the amount lying with it to the petitioners forthwith.

10. In view of above, the writ petition is disposed of by modifying the impugned order and directing that the amount lying with the Tribunal at Nagpur shall be released forthwith to the petitioners.

11. No order as to costs.

JUDGE

MP Deshpande