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

FIRST APPEAL NO.159 OF 2021
WITH
C.A.F. NO.3367/2019 IN F.A. [ST] NO.7268/2019
WITH
C.A.F. NO.3332/2019 IN F.A. [ST] NO.7301/2019

FIRST APPEAL NO.159 OF 2021

1. Premlal s/o Kandru Uike,
   Aged 54 years,
   Occu : Labour.

2. Jaywantabai w/o Premlal Uike,
   Aged 46 years, Occu : Housewife.

   Both R/o. Indora, Tah. Mauda,
   Dist : Nagpur. .. Appellants

.. Versus ..

1. Santosh s/o Seju Singh Sengar,
   Aged Major, R/o. Indora, Tah. Mauda,
   Dist : Nagpur.
   (Original Resp. No.1)

2. The National Insurance Co. Ltd. through
   Branch Manager, II Floor, Darshan Complex,
   Motor Stand, Kamptee,
   Dist : Nagpur.
   (Original Resp. No.2) .. Respondents

WITH

CAF NO.3367/2019 IN F.A. [ST] NO.7268 OF 2019

Omprakash s/o Mahipalsing Gautam,
Aged about 58 years,
Occupation-Labour,
R/o. Indora, Tah. Mauda,
Dist : Nagpur. .. Appellant

.. Versus ..

1. Santosh s/o Seju Singh Sengar,
   Aged Major, R/o. Indora, Tah. Mauda,
   Dist : Nagpur.
   (Original Resp. No.1)

2. The National Insurance Co. Ltd. Through
   Branch Manager, II Floor, Darshan Complex,
   Motor Stand, Kamptee, Dist : Nagpur.
   (Original Resp. No.2) .. Respondents

WITH

CAF NO.3332/2019 IN F.A. [ST] NO.7301 OF 2019

1. Ashok Shyamrao Thavakar,
   Aged 52 years, Occu : Labour.

2. Anurata w/o Ashok Thavakar,
   Aged 46 years,

   Both R/o. Inrapuri, Tah : Mouda,
   Dist. Nagpur .. Appellants

.. Versus ..

1. Santosh s/o Seju Singh Sengar,
   Aged Major, R/o. Indora, Tah. Mauda,
   Dist : Nagpur.
   (Original Resp. No.1)

2. The National Insurance Co. Ltd. through
Branch Manager, II Floor, Darshan Complex,
Motor Stand, Kamptee, Dist : Nagpur.
(Original Resp. No.2) .. Respondents

……….
Mr. Asghar Hussain, Advocate for the appellants,
Mr. C.A. Anthony, Advocate for respondent no.2.
……….

CORAM : M.S. SONAK, J.
DATED : DECEMBER 10, 2021.

JUDGMENT

Heard the learned counsel for the parties.

2. Having regard to the limited issue involved in all these appeals, the same are taken up for final disposal at the stage of admission with the consent of the learned counsel for the parties.

3. Mr. Hussain, the learned counsel for the appellants, submits that the challenge in these appeals is only to that portion of the impugned award made by the Tribunal to the extent the Tribunal has declined to make a 'pay and recover' order against the respondent-insurance company. He submits that such an order ought to have been made having

regard to the law laid down by the Hon'ble Supreme Court in **Pramod Kumar Agrawal and another .vs. Mushtari Begum and others, 2004 ACJ 1903, National Insurance Company Limited .vs. Baljit Kaur and others, 2004 ACJ 428 and Shamanna and another .vs. Divisional Manager, Oriental Insurance Company Limited and others, 2018 ACJ 2163**.

4. Mr. Anthony, the learned counsel for the insurance company, submits that it is true that Hon'ble Apex Court has made 'pay and recover' orders against the insurance company, but such orders are made in the exercise of powers vested in the Hon'ble Supreme Court under Article 142 of the Constitution of India. He submits that neither the Tribunal nor this court has any such powers and therefore, there is no case made out to interfere with the impugned award to the extent they decline to make 'pay and recover' orders.

5. In my judgment and further having regard to the law laid down by the Hon'ble Apex Court in *Baljit Kaur (supra)*, *Shamanna (supra),* and *Pramod Kumar Agrawal (supra)*, it will not be correct to say that the directions for 'pay and recover' have been made in exercise of powers conferred under Article

142 of the Constitution of India. Such orders have been made because the provision of the Motor Vehicles Act which relates to the payment of compensation to victims of an accident or their dependents is social security legislation intended to make available to such victims or their dependents a speedy remedy to tide over the unfortunate effects of a vehicular accident. There are cases where the Tribunal may conclude that there is some breach on the part of the owner or the driver of the insured vehicle of the terms and conditions of the insurance policy. Normally, the victim of the accident or the dependents of such victims are neither concerned with such breach nor are they responsible for such breach.

6. The decisions of the Hon'ble Supreme Court suggest that in such a situation, there is no point in depriving the victims or their dependents of the compensation that is found to be due to them. Further, there is no point in requiring the victim or their dependents to pursue the mode of execution against the vehicle owners or drivers which is usually quite a time-consuming process. Rather it would be appropriate, if the insurance company is required to pay the amount first but thereafter, recover the same from the owner of the insured vehicle. Such orders have been made to give full effect to the provisions of the M.V. Act both, in letter and

spirit. Such orders promote the object of the Act to make available quickly and relatively simply, the compensation amount determined in favor of the victims of vehicular accidents and their dependents.

7. For the above reasons, I am unable to approve the Tribunal's disinclination to make pay and recover orders in these cases. To that extent, the impugned awards warrant interference.

8. Accordingly, all these appeals are allowed and the impugned awards are modified. The modification shall now be that the insurance company must first pay the awarded amount to the claimants, but will thereafter be entitled to recover such amount from the owners of the insured vehicle by taking out proper execution proceedings before the Tribunal. In **National Insurance Company Limited .vs. Challa Bharathamma and others, III (2004) ACC 292 (SC)** the Hon'ble Supreme Court has made it clear that such execution proceedings can be filed before the Tribunal itself where execution may have been instituted by the claimants.

9. The insurance company is now directed to deposit the awarded amount together with interest before the Tribunal, within six weeks from today. Upon deposit, the claimants will be entitled to withdraw the same, in terms of which the impugned award as now modified.

10. The appeals are allowed in the aforesaid terms, There shall be no order for costs.

[M.S. Sonak, J.]

ABHIMANYU SHANKARRAO GULANDE

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