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C.R.P.(NPD).No.2278 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2278 of 2021

R.Deepa

... Petitioner

VS

1.Sivalingam @ Siva

2.Selvaraj

3.The New India Assurance Co. Ltd.,
Rep. by its Branch Manager,
No.687/3, 1st Floor, Sakthivel Towers,
Trichy Main Road, Ramanathapuram,
Coimbatore.

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to allow the revision petition by setting aside the order in I.A.No.2 of 2020 in M.C.O.P.No.374 of 2015 dated 23.01.2021 by the learned III Additional District and Sessions Court at Gobichettipalayam, Erode District.

For Petitioner : Mr.V.S.Rajaram



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For R3 : Mr.M.Krishnamoorthy
For R2 : No Appearance
For R1 : Not Ready in Notice

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner for payment out.

2. The petitioner herein filed Motor Vehicles Claim Petition for recovery of damages for the death of her mother in road accident in M.C.O.P.No.374 of 2015. The Tribunal passed an award quantifying the amount payable to the petitioner as Rs.3,83,000/-. The Tribunal also held that 3rd respondent/Insurance Company shall pay the amount and recover the same from owner/2nd respondent, who remained *exparte*.

3. Thereafter, the Insurance Company deposited the amount in the year 2007 itself and the petitioner/claimant filed instant application seeking payment out. The said application was dismissed by the Court below on the



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ground that no notice was issued to the 2nd respondent/owner of vehicle for furnishing security and offending vehicle was also not attached. The Tribunal relied on the judgement of the Hon'ble Apex Court in ***Oriental Insurance Company Limited vs. Shri Nanjappan and others*** reported ***2004 (1) TN MAC (SC) 211***.

4. The petitioner herein arrayed the owner of the vehicle as 2nd respondent in the payment out petition. It is for the Tribunal to order notice to the owner of the vehicle and direct him to furnish security. It is also open to the Tribunal to attach the offending vehicle if it is available. If necessary arises in this regard, the Executing Court can also take assistance of the Regional Transport Authority. In case of default by the owner, it is also open to the Executing Court to direct realisation of the amount by disposal of the security, if any, furnished by the owner of the vehicle or from any other property or properties of the owner/insurer. The said procedure is clearly laid down in above mentioned case law, the relevant observation of the Hon'ble Apex Court reads as follows:-

“8. For the purpose of recovering the same from



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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.”

5. Therefore, it is clear before making payment in favour of the claimant, the Court below is required to issue notice to the owner of the vehicle and direct him to furnish security. In case of default, it is also open to the Tribunal to order realisation of the amount by attaching other properties



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of the owner of the vehicle. No separate suit need to be filed by Insurance Company. The Tribunal instead of following the procedure mentioned in Paragraph No.8 of the judgement passed by the Hon'ble Apex Court simply dismissed the application filed by the claimant on the ground that no notice has been ordered to the owner of the vehicle. It is the duty of the Court to order notice to the owner of the vehicle and direct him to furnish security. Hence, the impugned order is set aside with a direction to the Tribunal to issue notice to the owner of the vehicle and direct him to furnish security.

6. Accordingly, the Civil Revision Petition is allowed. No costs.

08.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The III Additional District and Sessions Court,
Gobichettipalayam, Erode District.



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S.SOUNTHAR, J.

dm

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