BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.01.2024

PRONOUNCED ON: 28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2360 of 2019
and
C.M.P.(MD)No.12480 of 2019

The Oriental Insurance Company Limited,
represented by the Divisional Manager,
3rd Floor, Near Hotel Royal Court,
6-A, West Veli Street,
Madurai District. : Revision Petitioner / Petitioner/ 4th Respondent

Vs.

1.M.Sathishkumar : 1st Respondent/1st Respondent / 3rd Respondent

2.The Royal Sundaram Insurance Company,
12A, 5th Floor, ATB Tower,
Bye Pass Road,
Madurai District. : 2nd Respondent/2nd Respondent / 2nd Respondent

3.Manikandan : 3rd Respondent / 3rd Respondent / Petitioner

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records relating the order passed by the learned Motor Accident Claims Tribunal cum Special Sub Judge, Madurai, in E.P.No.54 of 2019, in M.C.O.P.No.955 of 2014, dated 07.12.2019 and set aside the same.

For Petitioner	: Mr.K.Balasubramanian
For Respondents	: No Appearance for R.1 to R.3

ORDER

The Civil Revision Petition is directed against the order passed in E.P.No.54 of 2019 in M.C.O.P.No.955 of 2014, dated 07.12.2019, on the file of the Motor Accident Claims Tribunal / Special Subordinate Court for M.C.O.P., cases, Madurai.

2. The revision petitioner is the fourth respondnet and the respondnets 1 and 3 as claimants have filed the motor accident claim original petitions in M.C.O.P.Nos.956 of 2014 and 955 of 2014 respectively claiming compensation for the injuries / disabilities sustained by them in a road accident occurred on 08.01.2014. It is

evident from the records that two vehicles viz., a two wheeler bearing Registration No.TN-59-BB 5817 and a Fiesta car bearing Registratiion No.TN-59-AQ-2982 were involved in the accident, that one Mohammed Raja who was the first respondent in both the claim petitions was the owner of the car and the second respondent was the insurer of the said car and that the first respondent herein – claimant in M.C.O.P.No.956 of 2014 was the owner of the two wheeler and the present revision petitioner was the insurer of the said two wheeler.

3. It is further evident from the records that a joint trial was ordered in both the M.C.O.Ps and a common order came to be passed on 15.11.2018, whereunder in M.C.O.P.NO.955 of 2014 – the revision petitioner was directed to pay compensation of Rs.1,51,000/- with interest and costs to the claimant Manikandan and directed the revision petitioner / insurer to recover the same from the first respondent herein – claimant in M.C.O.P.No.956 of 2014. The second respondent herein was directed to pay a compensation of Rs.1,82,000/- with interest and costs to the first respondent / claimant in M.C.O.P.No.956 of 2014.

4. The case of the revision petitioner is that the revision petitioner has filed the above execution petition in E.P.NO.54 of 2019 by alleging that they have deposited Rs.2,05,020/- before the concerned Court payable to the claimant Manikandan in M.C.O.P.No.955 of 2014, that as per the award, they have been directed to recover the same from the owner of the two wheeler – claimant in M.C.O.P.No.956 of 2014, that the second respondent – Insurer has also deposited Rs.2,00,000/- payable to the first respondent – claimant in M.C.O.P.No.956 of 2014 as per the award passed in M.C.O.P.No.956 of 2014, that the said amount of Rs.2,00,000/- payable to the first respondent has to be attached for the claim of the revision petitioner, that the two wheeler belonging to the first respondent has also to be attached and sold for the remaining amount and that therefore, the revision petitioner was constrained to file the above execution petition before the executing Court.

5. The first respondent has filed a counter statement raising objections stating that in M.C.O.P.No.956 of 2014, no order was passed against the first respondent – Sathiskumar, that the first respondent was directed to receive the compensation with interest and costs payable by the insurer, that the petitioner is not entitled to get any order of

attachment, that the vehicle belonging to the first respondent has already been seized by the police and is in the custody of the Court and that therefore, the petitioner is not entitled to claim any relief and as such, the petition is liable to be dismissed.

6. The learned Subordinate Judge, after enquiry, has passed the impugned order dismissing the execution petition mainly on two grounds viz., (1) that the revision petitioner/insurer in order to recover the amount from the vehicle owner, has to invoke Section 174 of the Motor Vehicles Act only by getting a certificate from the Tribunal and to recover the amount from the insured through the District Collector, who in turn has to proceed in the same manner as arrears of land revenue and that the insurer has no right to file the execution petition under Order 21 C.P.C., ; (2) any amount received by an individual person under insurance scheme cannot be attached under Section 60(kb) C.P.C.

7. The learned Counsel for the revision petitioner would submit that the executing Court by referring to the judgment of the Hon'ble Supreme Court in ***Hyderabad Company Operative Commercial Corporation Limited and others Vs. Syed Mohiuddin Khadir (dead) by***

LRs and others reported in ***CDJ 1975 SC 093***, relied on by the revision petitioner, wherein the finding of the High Court that "it will be open to the decree holder to take up execution against the Government for the amount due to him from Co-operative society", came to be confirmed, but has come to the conclusion that the above decision is not suitable, as the said decision is related to the litigation between the private party and the Co-operative society.

8. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in the case of ***Oriental Insurance Co., Ltd., Vs. Shri Nanjappan and others*** reported in ***2004(1) TN MAC (SC) 211*** wherein in a motor accident claim, the Hon'ble Apex Court has specifically observed that the insurer need not file separate suit for recovery, but may initiate proceedings before the executing Court and the relevant passage is extracted hereunder:

> *"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. The learned Counsel for the revision petitioner has also relied on the decision of the Hon'ble Supreme Court in ***Manuara Khatun and***

others Vs. Rajesh Kr. Singh and others reported in ***2017(1) TN MAC 289 (SC),*** wherein the Hon'ble Supreme Court has held as follows:

> *"22) In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.*
>
> *23) Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."*

10. Considering the legal position above referred, this Court has no hesitation to hold that the insurer has every right to invoke Order 21 C.P.C., to recover the amount from the owner of the vehicle as directed in the award and as such, the finding of the executing Court that the execution petition filed under Order 21 C.P.C., is not maintainable, cannot be sustained.

11. Now turning to the second ground, it is necessary to refer Section 60(kb) C.P.C., for better appreciation. Section 60C.P.C., deals with the property liable to attachement and sale in execution of decree. Section 60(kb) reads as follows:

> " all moneys payable under a policy of insurance on the life of the judgment debtor" .

12. Considering the above, it is very much clear that any amount payable under life insurance policy of the judgment debtor cannot be attached in execution of decree. But in the case on hand, the amount now available in the Court deposit is the compensaton amount deposited by the insurer of a vehicle owned by a third party. Since the first respondent

was injured in an accident occurred involving a car and his own two wheeler, the insurer of the car was directed to pay compensation to the injured and that amount is now in the Court deposit.

13. As already pointed out, in the same accident, since the said injured Sathiskumar was made responsible for the accident and that since he had driven the vehicle without valid driving licence, the insurer of his two wheeler was directed to pay compensation to the pillion rider who was also injured and directed the insurer after paying the compensation to the injured, to recover the same from the said Sathishkumar, being the owner of the vehicle. Hence, the said amount by no stretch of imagination can be brought under Section 60(kb) C.P.C. More importantly, the said amount is not a policy amount to receive on the basis of the life insurance policy of the injured Sathishkumar. Hence, this Court concludes that the impugned order which is legally unsustainable is liable to be set aside.

14. Regarding the motor vehicle, even according to the first respondent, the said vehicle has already been seized by the police and the same was received and remanded by the jurisdictional Magistrate Court.

It is not known as to whether any property order was passed in the criminal case. Whatever it is, since the vehicle is in the Court custody, the revision petitioner as per the decisions of the Hon'ble Supreme Court above referred, is certainly entitled to get an order of attachment of the said vehicle. Hence, attach the properties shown in the execution petition in E.P.No.54 of 2019. The revision petitioner is directed to pay batta within a period of 10 days before the executing Court from the date of receipt of a copy of this order.

15. The Civil Revision Petition is allowed with the above directions. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

28.03.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL
To
1. The Motor Accident Claims Tribunal cum
Special Subordinate Court, Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.R.P.(MD)No.2360 of 2019

28.03.2024