

Before M. Jeyapaul, J.

RAJBIR & OTHERS—Petitioners

versus

THE NEW INDIA ASSURANCE COMPANY LTD.—Respondents

CR No. 2834 of 2012

September 27, 2012

Constitution of India 1950- Art.227 - Motor Vehicles Act, 1988 - Execution - Claimants filed a revision - Award passed in their favour - Driver and owner held liable to pay compensation - Insurance company directed to pay compensation and thereafter recover the same from owner-cum-driver - Insurance company filed execution application - Claimants/petitioners sought disbursement of entire amount deposited by Insurance Company - Executing Court held that amount deposited by Insurance Company shall not be released till insured furnishes a security - Insured could not be served - Claimants filed revision seeking disbursement of entire amount deposited - Allowed - Held, claimants cannot wait indefinitely till the service is effected and insured comes with security.

Held, that coming to the decision in Oriental Insurance Company Limited (supra), of course the Hon'ble Supreme Court has held that owner of the vehicle shall be issued with a notice and he shall be required to furnish security for the entire compensation amount before the amount is released to the claimants.

(Para 10)

Further held, that the aforesaid observation made by Hon'ble Supreme Court would apply to a case where the insured responding to the notice issued by the Executing Court appears before the Court within a reasonable time and furnishes security.

(Para 11)

Further held, that the injured-claimant who has successfully got an award may require the award amount instantly for the purpose of meeting urgent medical expenses. In a case where the claimants who depended solely on the bread-winner who lost his previous life in the motor accident, may require the award amount for their existence/survival. Such claimants cannot wait indefinitely till the service is effected and the insured comes out with security for the amount deposited by the insurance company.

(Para 13)

Further held, that in the instant case, it has been demonstrated that the claimants are in dire necessity to receive the award amount deposited by the insurance company. In my considered opinion, it would be unjust to direct such claimants to wait indefinitely/unendingly to receive the compensation which was justifiably awarded in their favour. Therefore, the above observation made by the Hon'ble Supreme Court in the aforesaid case would not apply to the special facts and circumstances of the instant case where the insured dodges the notice as well as the bailable warrant issued as against him for nearly 1½ years.

(Para 14)

Further held, that in view of the above, I find that the claimants are entitled to disbursement of the compensation amount deposited by the Insurance Company in terms of the award passed as against the Insurance Company. The impugned order passed by, the executing Court stands set aside with respect to the rejection of the plea for disbursement of the entire

compensation deposited by the Insurance Company and the executing Court is directed hereby to disburse the entire amount of compensation to the claimants without waiting for the service of notice/bailable warrant on the insured.

(Para 15)

Sandeep Kotla, Advocate, *for the petitioners.*

R.C. Kapoor, Advocate, *for the respondent.*

M. JEYAPPAUL, J. (ORAL)

(1) The claimants have preferred the present civil revision aggrieved by the rejection of their plea for releasing the amount deposited by the Insurance Company in connection with the award passed by the Tribunal in their favour.

(2) The driver and owner of the vehicle was held liable to pay the compensation but the Insurance Company was directed to pay first the compensation liable to be paid by the owner-cum- driver and thereafter recover the same from the owner-cum-driver.

(3) The Insurance Company filed an execution application as against the owner -cum- driver on 3.5.2011 in terms of the award passed by the Tribunal on 26.3.2011. Though the claimants were not parties to the said execution application filed by the Insurance Company and it was only owner -cum- driver who was the respondent in the said execution application, the Tribunal thought it fit to issue notice to the claimants also. The claimants appeared through their counsel Mr. Ashok Rao, Advocate and contended that the entire amount deposited by the Insurance Company in terms of the award passed by the Tribunal should be disbursed to them without insisting upon any security from the insured/ the driver -cum- owner.

(4) The executing Court having referred to the decision of the Hon'ble Supreme Court on *Pramod Kumar Agrawal & others* versus *Mushtari Begum & others (1)* held that the amount deposited by the Insurance Company shall not be released to the claimants till insured/ driver -cum- owner furnishes a security before the executing Court.

(5) Learned counsel appearing for the revision petitioners would submit that the accident took place on 9.7.2009. The award was passed by the Tribunal on 26.3.2011. Execution application was filed by the Insurance Company on 3.5.2011. Till date, the insured was not served with notice as well as bailable warrants issued as against him. It is his further submission that in a case where insured appeared before the executing Court within a reasonable time, ofcourse the executing Court will have to insist upon security from the insured before releasing the amount. But in this case, the insured is dodging the receipt of the summons as well as the bailable warrants issued as against him. It is further found that bailable warrants were also not executed by the police authorities concerned. The poor claimants are suffering in spite of the fact that they have got an award in their favour, therefore, it is his submission that the order of the executing Court is liable to be revised.

(6) Per contra, learned counsel appearing for the Insurance Company/ respondent citing the decision of the Hon'ble Supreme Court in *Pramod Kumar Agrawal & others* versus *Mushtari Begum & others* (2), and yet another decision of the Hon'ble Supreme Court in *Oriental Insurance Company Limited* versus *Shri Nanjappan & others* (3), would submit that the question of releasing the compensation amount deposited by the Insurance Company without insisting upon any security from the insured would not arise in a case where the insurer has got a right to recover the entire compensation amount paid by it from the insured.

(7) In the case in *Oriental Insurance Company Limited* (*supra*), the Hon'ble Supreme Court has held as follows:-

“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

(2) 2005(3) PLR 540

(3) 2004(2) PLR 51

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.”

(8) In a subsequent decision, the Hon'ble Supreme Court in *Pramod Kumar Agrawal (supra)*, has held as follows:-

“11. Therefore, while upholding 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 owner 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 claimants, owner of the vehicle i.e. appellant no. 1 shall 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

owner of the vehicle i.e. appellant no.1 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 appellant no.1).”

(9) Adverting to the facts of the case in *Pramod Kumar Agrawal (supra)*, it is found that the insured was very well before the Supreme Court. Therefore, the Hon’ble Supreme Court held that the insured should come out with some security before the release of the compensation amount to the claimants by the executing Court.

(10) Coming to the decision in *Oriental Insurance Company Limited (supra)*, ofcourse the Hon’ble Supreme Court has held that owner of the vehicle shall be issued with a notice and he shall be required to furnish security for the entire compensation amount before the amount is released to the claimants.

(11) The aforesaid observation made by Hon’ble Supreme Court would apply to a case where the insured responding to the notice issued by the Executing Court appears before the Court within a reasonable time and furnishes security.

(12) In the instant case, it is found that the accident had taken place on 9.7.2009. The award was passed on 26.3.2011. In the execution application which was filed by the insurance company on 3.4.2011, the insured could not be served with notice. Even the issuance of bailable warrant as against the insured did not yet yield desired result.

(13) The injured-claimant who has successfully got an award may require the award amount instantly for the purpose of meeting urgent medical expenses. In a case where the claimants who depended solely on the bread-winner who lost his previous life in the motor accident, may require the award amount for their existence/survival. Such claimants cannot wait indefinitely till the service is effected and the insured comes out with security for the amount deposited by the insurance company.

(14) In the instant case, it has been demonstrated that the claimants are in dire necessity to receive the award amount deposited by the insurance company. In my considered opinion, it would be unjust to direct such

claimants to wait indefinitely/unendingly to receive the compensation which was justifiably awarded in their favour. Therefore, the above observation made by the Hon'ble Supreme Court in the aforesaid case would not apply to the special facts and circumstances of the instant case where the insured dodges the notice as well as the bailable warrant issued as against him for nearly 1½ years.

(15) In view of the above, I find that the claimants are entitled to disbursement of the compensation amount deposited by the Insurance Company in terms of the award passed as against the Insurance Company. The impugned order passed by the executing Court stands set aside with respect to the rejection of the plea for disbursement of the entire compensation deposited by the Insurance Company and the executing Court is directed hereby to disburse the entire amount of compensation to the claimants without waiting for the service of notice/ bailable warrant on the insured.

(16) Revision petition is allowed.
