

SUPREME COURT OF INDIA

New India Assurance Co.Ltd.

Vs.

Kusum

(S.B. Sinha and Deepak Verma JJ.)

04.08.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted.
2. These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.
3. We would, however, notice the fact of the matter from CA @ Special Leave Petition (C) No.3372 of 2007.

“On or about 14.7.1999, respondent No.3 was traveling in a bus bearing Registration No.PB-23-0189 which met with an accident as a result of which the deceased, Sanjay Kumar, got injured and while being taken to the hospital, he succumbed thereto. The said bus was owned by New Patiala Bus Service (Regd.) Sirhind, the respondent No.4 herein.

Legal representatives of the deceased filed a claim petition before the Motor Accidents Claim Tribunal which by its order dated 4.12.2001 awarded a sum of Rs.2,68,800 by way of compensation. The learned Tribunal held that the driver of the bus had not been possessing a valid driving licence. The primary liability to pay the said amount was held to be that of respondent No.3 and 4, the driver and owner of the bus. The appellant was directed to deposit the amount directing that the company may recover the same from respondent Nos.3 and 4. Pursuant to the said observations, the appellant company made payments to the claimants on or about 15.3.2002 by depositing a sum of Rs.3,03,552/- by cheque.”

4. On or about 8.5.2002 in terms of the order of the Tribunal, an Execution Petition was filed, stating :

“11. That in the claim petition No.82- T/99/26.9.2000 titled as Kusum widown of Sanjay and others, the Hon'ble Court was pleased to allow the claim petition partly on

4.12.2001 that the claimants are held entitled to Rs.2,68,800/- as compensation to be shared equally by them. The claimants are also entitled to interest at the rate of 9 per cent per annum from the date of claim application till its actual realization. Though the primary liability to pay the amount of compensation is that of respondent No.1 and 2 jointly and severally, however, it will also be open to the Claimants to recover the same from Respondent No.3 Insurance Company. As already held above, the insurance company would be at liberty to recover the same from Respondent No.1 and 2 in terms already mentioned in the preceding paragraphs.

12. That as per the directions of this Hon'ble Court, the DH/Applicant. Insurance Company has deposited Rs.3,03,552/- in the Hon'ble Court on 30.3.2002 and DRO of this amount has also been issued by this Hon'ble Court.

13. That as per the terms and conditions of the award, the DH/Applicant is entitled to recover the deposited amount of Rs.3,03,552/- along with 9% interest on the deposited amount from 31.3.2002 onwards.

14. That the JDs/Respondents have not paid even single penny to the Claimants or to the DH/Applicant so far.

15. Hence, this execution application and it is prayed that the execution application may please be accepted. The JDs/Respondents may kindly be directed to pay the amount of Rs.3,03,552/- along with future interest at the rate of 12% on the deposited amount till its actual realization failing which the property of the JDs/Respondents may be attached, auctioned to satisfy the award amount and/or JDs/Respondents in the civil person as per law.”

5. On receiving the said notice, the respondent No.3 by filing an objection to the said Execution Petition raised a question that the said Execution Petition was not maintainable and, in fact, a civil suit is required to be filed for recovery of the amount. The said objection of Respondent No.4 was sustained by the Executing Court by a judgment and order dated 12.6.2003, holding:

“I have considered the aforesaid case law cited at the bar. Authority cited as unreported Judgment of the Hon'ble Delhi High Court, cited by the learned counsel for Insurance Company - knows decree-holder is not applicable to the facts of the case in hand. In this case, liability of insurance company was limited to the extent of Rs.15,000/- which was ordered to be recovered from the owner and it was observed that on the application of the insurer the claim tribunal is supposed to issue a certificate for recovery of the excess amount paid by the Insurance Company to the collector and collector is supposed to recover the same in the same manner as arrears of land revenue from the insured. Award passed in favour of the LRs of the deceased can't be treated as decree in favour of 5 Insurance Company. Insurance Company can effect recover of the amount from the objector through a regular civil suit as per the

observations of our own Hon'ble High Court reported in 2002- 1) PLR Page 39 and (2001-3) PLR Page 813 - Supra by the learned counsel for the objector.

Further, proceedings in claim cases are of summary nature for which no strict proof was required but in the regular suit procedure for providing document is strictly as per law. Thus, execution application being not maintainable stands dismissed. However, Insurance Company has an independent right to recover the amount from insured (Owner and Driver) as per award through regular civil suit. File be consigned.”

6. An application under Article 227 of the Constitution of India filed thereagainst by the appellant has been dismissed by the High Court by the impugned judgment upon considering the decision of this Court in *Oriental Insurance Company Ltd. v. Shri Nanjappan & Ors.*¹, stating :

“The reading of the judgment shows that the Hon'ble Supreme Court in the facts and circumstances of that case had directed that the Insurance Company can recover the amount from the insured and the Insurance Company shall not be liable to file a separate suit. This cannot be said to be laying down a precedent that in all cases where the liability is fixed on the Insurance Company, it can always recover the amount from the owner/driver. In the given case, it is still open to the owner to dispute the liability on the plea that he had taken all necessary steps to see that the driver had a licence and he had no means to find out that the same was fake.”

7. An owner of a vehicle in terms of the provisions of the Motor Vehicles Act is legally obligated to get the vehicle insured. The rights and liabilities of the parties to the contract of insurance would be governed thereby subject to the provisions of the Motor Vehicles Act. One of the conditions which would make the insurance company liable to reimburse the owner of the vehicle in respect of payment of the amount of compensation in favour of a claimant is that the driver of the vehicle must possess a valid driving licence. The owner has a duty to see that a vehicle is driven by a person having a valid driving licence. The licence of the driver of the said bus was proved to be invalid. The owner did not raise any contention that he has used due diligence in allowing the driver to drive the vehicle.

8. The courts, however, keeping in view the social justice doctrine in mind wherefor the Act was enacted and in the interest of the claimants had been passing such orders. The High Court has noticed the decision of this Court in Nanjappa (supra), wherein it was held:

“8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur case that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, 7 to the respondent 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 executing court concerned 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 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 Regional Transport Authority concerned. 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."

As noticed hereinbefore, similar directions were also issued in *National Insurance Co. Ltd. v. Baljit Kaur*² in the following terms :

"21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree.

The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in *Satpal Singh*¹. The said decision has been overruled only in *Asha Rani*². We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the 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. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

Yet again, in *National Insurance Co. Ltd. v. Kusum Rai*³, it was held :

"Thus, although we are of the opinion that the appellant was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was in error in holding otherwise, we decline to interfere with the impugned award, in the peculiar facts and circumstances of the case, in exercise of our jurisdiction

under Article 136 of the Constitution but we direct that the appellant may recover the amount from the owner in the same manner as was directed in Nanjappan (supra)."

Yet again in *Oriental Insurance Co. Ltd. v. Zaharulnisha*⁴, this Court held :

"22. In the result, the appeal is allowed to the limited extent and it is directed that the appellant Insurance Company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle viz.

Respondent 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal.

This direction is given in the light of the judgments of this Court in *National Insurance Co. Ltd. v. Baljit Kaur and Deddappa v. National Insurance Co. Ltd.*"

Again in *Dedappa v. National Insurance Co. Ltd.*⁵, it was held :

"26. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct Respondent 1 to pay the amount of claim to the appellants herein 10 and recover the same from the owner of the vehicle viz. Respondent 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly."

9. Whenever, thus, a direction has been issued by the Tribunal, it must be held to have been done in exercise of its inherent power. It would be travesty of justice, if the Insurance Company which is directed to pay the amount and then face immense difficulties in executing a decree.

10 We, therefore, are of the opinion that the impugned judgments cannot be sustained. They are set aside accordingly. Appeals are allowed, the executing courts are directed to proceed with the execution and dispose of the same as expeditiously as possible.

¹(2004) 13 SCC 224

²(2004) 2 SCC 1

³2006) 3 SCALE 519

⁴(2008) 12 SCC 385

⁵(2008) 2 SCC 595