

Dabbal and Others Vs. Oriental Insurance Co. Ltd. and Another

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Court : Madhya Pradesh

Decided On : Apr-01-2014

Judge : Rajendra Menon & A.K. Sharma

Appeal No. : W.P. No. 7638 of 2009

Appellant : Dabbal and Others

Respondent : Oriental Insurance Co. Ltd. and Another

Advocate for Pet/Ap. : Shri. Pramod Thakre

Judgement :

Even though notice was issued to respondent No.2 and the matter is pending since 2009, none is appearing for the said respondent.

Challenge in this writ petition under Article 227 of the Constitution is made to an order dated 25.3.2009 passed by the 5th Motor Accident Claims Tribunal, Chhindwara in Execution Case No.109/2002. By the said order an application filed by petitioners for execution and recovery of a sum of Rs.50,000/- awarded under the provisions of 140 of Motor Vehicles Act against the respondent No.2 owner of the vehicle is rejected. Arising out of the death of one Shankar @ Bhoora, son of petitioners No.1 and 2 and husband of petitioner No.3 and father of petitioner No.4. The claim petition was filed under Section 166 of Motor Vehicles Act claiming the compensation of Rs.5 Lacs. In the said proceeding pending under Section 166 an application was filed under Section 140 of the Motor Vehicles Act

claiming interim compensation. This application was allowed and vide order dated 15.2.2000 Annexure P/2 under the principle of No fault liability, respondent No.2 owner of the vehicle was directed to make payment of this amount. However, in the meanwhile, on the ground that various documents and other material are not available, claim petition was withdrawn by filing an application Annexure P/3 on 22.12.2004 under Order 23 Rule 3 CPC. Accordingly, claim petition was dismissed as withdrawn. As the amount of interim compensation of Rs.50,000/-, awarded under Section 140 of the Motor Vehicles Act was not paid, the execution proceeding was filed. Respondent No.2 raised an objection and submitted that as the interim award under Section 140 has merged into the final award, dismissing the claim petition, the execution proceeding was not maintainable. Based on the judgment rendered in the case of National Insurance Co. Ltd. Vs. Kalyan Singh and others - 2007 ACJ 1932, this objection having been sustained and the execution proceeding dismissed, this writ petition has been filed.

Shri Pramod Thakre, learned counsel for the petitioners argued that a award and a proceeding held under Section 140 can be executed even if the claim petition is dismissed and in dismissing the execution proceeding it is argued that an error has been committed by the respondents. Placing reliance on a judgment of the Supreme Court in the case of Eshwarappa Alias Maheshwarappa and another Vs. C. S. Gurushanthappa and another - (2010)8 SCC 620; Indra Devi and others Vs. Bagada Ram and another - (2010)13 SCC 249 and a judgment by a Division Bench of this Court in the case of Krishna and Others Vs. J. P. Sharma and Others - 1998(II) ACJ 205, it was submitted by learned counsel that in placing reliance on the judgment in the case of National Insurance Co. Ltd. (supra) and rejecting the claim, an error has been committed.

Shri S. K. Rao, learned Senior Counsel for the Insurance Company argued that as Insurance Company is held not liable, he has no say in the matter.

As already indicated above, none is appearing for respondent No.2 even though notices have been issued and matter is pending since 2009. Learned Trial Court as rejected the claim petition only on the ground that interim order under Section 140 merges with the final order passed under Section 166. As the claim petition is

dismissed, no execution claim is permissible.

Prima facie the order impugned seems to be incorrect, in view of the principles laid down in the case of Eshwarappa Alias Maheshwarappa (supra). In the aforesaid case, the Supreme Court has taken note of the provisions of Sections 140, 141, 144, 146, 147 and 149 of the Motor Vehicles Act and it is held that no fault liability imposed under Section 140 is an independent act and even if the original claim is rejected, still on the principle of no fault, compensation under Section 140 can be awarded. Keeping in view the aforesaid legal principle, we are of the considered view that the matter has to be reconsidered. Even though based on the material available this Court could go into the merits of the claim and decide it but considering the fact that respondent No.2 is not available and an ex-parte order behind their back is not in the interest of justice, it is thought appropriate to remand the matter back to the Execution Court with a direction to take note of the legal principles as indicated herein above and decide the execution proceeding after hearing all concern afresh in accordance to law.

In view of the above, this petition is allowed.

Impugned order dated 25.3.2009 is quashed and the matter is remanded back to the Execution Court for deciding the execution proceeding afresh. Learned Execution Court is directed to decide the matter within a period of 60 days from the date of receipt of certified copy of this order.

With the aforesaid, this petition stands allowed and disposed of.

C.C. as per rules.

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