

ORIENTAL INSURANCE CO. LTD.

v.

SHRI NANJAPPAN AND ORS.

FEBRUARY 13, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Motor Vehicles Act, 1988—Section 168—Claim for compensation—High Court holding that claimant entitled to compensation from the owner of the vehicle-insured and insurer liable to pay compensation by way of indemnification—Correctness of—Held: Insurer would pay compensation fixed which it would recover from the insured, thus order of High Court set aside—For recovery filing of suit not required—Proceedings may be initiated before Executing Court which will pass appropriate orders regarding the manner of payment to the insurer by the insured.

An accident took place and the respondent-claimant filed claim petition. Courts below held that the insured-owner of the vehicle was only liable and not the insurer. High Court applying the decision of *Satpal Singh's* case held that the respondent-claimant were entitled to compensation from the insured-owner of the vehicle which was insured with the appellant-insurer and the insurer was to pay compensation by way of indemnification.

Hence the present appeal.

Respondent-claimant contended that though the view in *Satpal Singh's* case has been overruled, yet in a recent decision in *Baljit Kaur's* case it is held that it would be equitable if the insurance company pays the amount of compensation to the claimant and recovers it from the insured.

Disposing of the appeal, the Court

HELD: The insurer shall pay the quantum of compensation fixed by the tribunal to the respondents-claimant within three months from today which it will recover from the insured for which the insurer shall not file a suit but initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject

A 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 concerned Regional Transport Authority. It 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 the Executing Court shall direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle. [368-D-G]

New India Assurance Company v. Satpal Singh and Ors., [2000] 1 SCC 237, overruled.

M/s. National Insurance Co. Ltd. v. Baljit Kaur and Ors., [2004] 1 SCALE 124, relied on.

New India Assurance Co. Ltd. v. Asha Rani, [2003] 2 SCC 223 and *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy*, [2003] 2 SCC 339, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1012 of 2004.

From the Judgment and Order dated 28.10.2002 of the Madras High Court in L.P.A. No. 27 of 2001.

Joy Basu for B.K. Satija for the Appellant.

A.T.M. Sampath and Ms. Aarthi Radhakrishnan for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Oriental Insurance Company Limited (hereinafter referred to as an 'insurer') calls in question legality of the judgment rendered by a Division Bench of the Madras High Court holding that the respondents (hereinafter referred to as the 'claimants') were entitled to compensation from the owner of the vehicle (described hereinafter as 'insured') which was the subject matter of insurance with the appellant and that the insurer had the liability to pay the compensation by way of indemnification.

The Motor Accident Claims Tribunal and Subordinate Court, Tirupur (hereinafter referred to as the 'Tribunal') had held that the liability was of the insured alone, and the insurer had no liability. In appeal, for accepting the case of the respondents-claimants the High Court held that the decision of this Court in *New India Assurance Company v. Satpal Singh and Ors.*, [2000] 1 SCC 237 was applicable. It has to be noted that the accident took place on 15.9.1990 and the Claim Petition was filed under the Motor Vehicles Act, 1988 (in short the 'Act').

In support of the appeal, learned counsel for the insurer submitted that the judgment in *Satpal Singh's* case (supra) has been reversed in *New India Assurance Co. Ltd. v. Asha Rani*, [2003] 2 SCC 223 and the said decision was followed in *Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy*, [2003] 2 SCC 339.

Learned counsel for the respondents-claimants on the other hand submitted that though the view in *Satpal Singh's* case (supra) has been reversed, yet in a recent decision in *M/s National Insurance Co. Ltd. v. Baljit Kaur and Ors.*, (2004) 1 SCALE 124 it has been held that it would be equitable if the insurance company pays the amount of compensation to the claimant and recovers it from the insured.

It has to be noted that the insured did not appear before the High Court and also has not appeared in this Court in spite of service of notice.

The view of the High Court cannot be maintained in view of what has been stated in *Asha Rani's* case (supra) and *Devireddy's* case (supra). To that extent the judgment of the High Court is unsustainable. At the same time, the observations of this Court in *Baljit Kaur's* case (supra) also need to be noted. In para 21 of the judgment, it was observed as follows:

"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* (supra). The said decision has been overruled only in *Asha Rani* (supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant

A 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 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.”

D 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 E 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 F realization by disposal of the securities to be furnished or from any other G 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.