

**Court No. - 38**

**Case :-** FIRST APPEAL FROM ORDER No. - 1453 of 2021

**Appellant :-** R.K. Public School

**Respondent :-** Vinay Kumar Sharma (Deceased) And 6 Others

**Counsel for Appellant :-** Saurabh Kumar

**Hon'ble Siddharth,J.**

**Order on Appeal**

Heard learned counsel for the appellant.

This first appeal from order has been preferred by the owner of the vehicle against the judgement and order dated 29.10.2020 passed by Motor Accidents Claims Tribunal/Presiding Officer, Muzaffarnagar, in M.A.C.P. No. 562/2015 [Vinay Kumar Sharma (Deceased) and others Vs. Oriental Insurance Company Ltd. and others].

Admit.

Issue notice to the respondents by ordinary process as well as by R.P.A.D. returnable within four weeks.

Learned counsel for the appellant is directed to take steps for effecting service of notice on respondents within a week.

List this case on 30.11.2021 after service of notice on respondents along with office report.

**Order on Civil Misc. Stay Application No. 1 of 2021**

A supplementary affidavit has been filed by the learned counsel for the appellant stating that the respondent no. 6, Oriental Insurance Company Ltd., has deposited the claim amount of Rs. 24,49,138/- by means of a cheque dated 04.12.2020 before the Motor Accidents Claims Tribunal, Muzaffarnagar on 22.12.2020 in Misc. Case No. 10/2020. By the order dated 01.02.2021, the Tribunal has directed to release part of deposited amount of award in favour of the claimants and part of amount has been put in fixed deposit. However, it is clear from the order that no security has been furnished by the appellant against the amount released in favour of the claimants. The Tribunal has relied upon the Single Bench judgement of this Court in the case of **ICICI Lombard General Insurance Company Ltd. Vs. Sirajuddin and others, 2013 (100) ALR 491** and has held that the directions of the Apex Court in the case of **Oriental Insurance Company Ltd. Vs. Nanjappan and others, AIR 2004 SC 1630** and **National Insurance Company Ltd. Vs. Challa Bharathamma and others, JT 2004 (7) SC 519**, was not mandatory but only directory to the extent that application should be filed by the insurance company for recovery of amount. Once application is filed and notices are issued, it is sufficient to protect the interest of insurance company.

The Full Bench judgement of this Court in the case of **United India Insurance Co. Ltd. Vs. Smt. Shashi Prabha Sharma and others, 2015 (7) ADJ 277 (FB)** was not brought to the notice of Tribunal wherein this

Court has held in paragraph no. 30 as follows :-

*"In these circumstances, we hold that where the insurer is directed to pay the amount in the first instance despite having been held not to be under a legal liability to pay the awarded amount, while permitting the insurer to recover the amount from the owner, the procedure which has been laid down in Challa Upendra Rao (supra) would have to be followed. This would envisage that before the amount is released to the claimant, the owner of the offending vehicle shall furnish security for the amount which the insurer has to pay to the claimants. The offending vehicle is to be attached as a part of the security for the purpose of recovering the amount from the insured. The insurer shall not be required to file a suit and may initiate a proceeding before the executing Court. The executing Court may pass appropriate orders in accordance with law as to the manner in which the insured, namely the owner of the vehicle, shall make payment to the insurer. In the event that there is any default, it is open to the executing Court to direct realisation by the disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle. In the event that the person on whose behalf payment has been made by the insurer, does not furnish security or is not in a position to furnish security to the insurer, the insurer should promptly move the executing Court. The executing Court shall then duly ensure that it exercises all its available powers in execution in accordance with law so that while on one hand payment is made to the person to whom it is due, the concerns of the insurer are duly balanced. We may only add here that all necessary and proper steps should be taken by the executing Court to ensure that the intent and object of the legislature in enacting the beneficial provisions of the Act is duly preserved and are expeditiously implemented."*

In view of the above, it is clear that appellant was required to furnish security for the entire amount awarded by the Tribunal in favour of the claimants.

Accordingly, the appellant is directed to furnish security for the entire awarded amount deposited by the insurance company before the Motor Accidents Claims Tribunal, Muzaffarnagar within a period of six weeks. In case the security is furnished by the appellant as directed above, the execution of award dated 29.10.2020 passed in M.A.C.P. No. 562/2015 [Vinay Kumar Sharma (Deceased) and others Vs. Oriental Insurance Company Ltd. and others], shall remain stayed.

However, in case of default, the Tribunal would be at liberty to proceed against the appellant as per the Full Bench judgement of this Court in the case of **Smt. Shashi Prabha Sharma (supra)**.

**Order Date :- 28.9.2021**

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