

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.76 of 2015

National Insurance Company Limited, Naveen Bazar, G.E. Road,  
Raipur, District Raipur (C.G.)  
Through Authorized Signatory, National Insurance Company  
Limited, Divisional Office, Taha Complex, Vypar Vihar Road,  
Bilaspur (C.G.)

---- Petitioner

Versus

1. Jogendra Singh (Died and deleted)
2. Smt. Vachan Kour, W/o Jogendar Singh, aged about 60 years.
3. Smt. Jogindar Kour, Wd/o Late Kuldip Singh, aged about 25 years.
4. Minor Ranjeet Singh, S/o Late Kuldip Singh, aged about 5 years.
5. Minor Kumar Palindar Kour, D/o Late Kuldip Singh, aged about 3 years.  
Minors Respondent No.4 & 5, through natural guardian mother Smt. Jogindar Kour, D/o Late Kuldip Singh.  
All above by religion Sikhism, R/o Village Sarupval, Tahsil Bholath, District Kapurthala (Punjab)
6. Daljeet Singh, S/o Gurumukh Singh, R/o T.T. Nagar, Kanpur (U.P.)
7. Malkiyat Singh, S/o Shri Dhan Singh, R/o L.I.G./681, M.P. Housing Board Colony, Tatibandh, Raipur, Tahsil & District Raipur (C.G.)
8. Motor Accident Claims Tribunal, Jashpur, District Jashpur (C.G.)

---- Respondents

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For Petitioner: Mr. Qamrul Aziz, Advocate.

For Respondents No.2 to 5: -

Mr. A.K. Prasad and Mr. Aditya Chopda, Advocates.

*Amicus Curiae:* Mr. Hari Agrawal, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/12/2018

1. National Insurance Company Limited, the petitioner herein, takes

exception to the legality, validity and correctness of the order dated 30-1-2015 passed by the Motor Accident Claims Tribunal, Jashpur directing issuance of warrant of arrest invoking Order 21 Rule 41 (3) of the Code of Civil Procedure, 1908 for non-depositing the full amount of compensation pursuant to the award granted by the Claims Tribunal by award dated 17-1-2013 duly affirmed by this Court by order dated 10-6-2013 passed in M.A.(C)No.518/2013.

2. The Claims Tribunal passed an award of ₹ 4,57,000/- along with 9% interest and appeal against the same was dismissed by this Court, thereafter, the Insurance Company deposited the award amount of ₹ 9,54,975/- before the Claims Tribunal and deducted ₹ 1,30,744/- under the provisions of the Income Tax Act as TDS and certificate was also filed before the Claims Tribunal. Thereafter, on 17-12-2014, a cheque of ₹ 1,42,544/- deducted towards TDS was also deposited, as warrant of arrest was issued against the Branch Manager of the petitioner Company and the said Claims Tribunal directed for recall of the warrant of arrest already issued, but thereafter, again on 30-1-2015, warrant of arrest has been issued under the aforesaid provision, which has been questioned by this writ petition.

3. Mr. Hari Agrawal, learned Amicus Curiae, submits that the award passed by the Motor Accident Claims Tribunal can be executed in accordance with the provisions of the Code of Civil Procedure, 1908 i.e. Order 21 Rule 1 and relied upon a Full Bench decision of the M.P. High Court in the matter of **Smt. Sarmaniya Bai and**

others v. Madhya Pradesh Rajya Parivahan Nigam and others<sup>1</sup>.

4. I have heard learned counsel for the parties including the Amicus Curiae and considered their rival submissions and went through the record with utmost circumspection.
5. The question for consideration would be, whether the Claims Tribunal constituted under the provisions of the Motor Vehicles Act, 1988 has power and jurisdiction to enforce its award in accordance with the provisions contained in the Code of Civil Procedure, 1908?
6. In Smt. Sarmaniya Bai (supra), the Full Bench has considered the issue and framed following question: -

“4. ... Whether the Tribunal passing an award under the provisions of the Motor Vehicles Act for compensation to claimants for death or injuries lacks jurisdiction to enforce its award adopting procedure provided under C.P.C., exercising its inherent jurisdiction in that regard? ...”

7. The Full Bench answered the question as under: -

“23. Our conclusion, therefore, is that the law expounded by the learned single Judge of this Court in his order passed on 31-3-1989 in disposing of Civil Revision No. 134 of 1987, preferred by the appellants is incorrect. Law was not correctly stated in taking the view that the Claims Tribunal cannot execute its own award in any other manner except in accordance with the provisions of S. 110-E of the Act. On the contrary, we are of the view that the Claims Tribunal possesses inherent jurisdiction to enforce its own award in accordance also with the provisions of CPC as applicable to execution of orders and decrees passed by a Civil Court. Accordingly, we answer the question in the affirmative.”

8. Thus, from the aforesaid principle of law rendered by the Full Bench of the Madhya Pradesh High Court, it is quite evident that Motor Accident Claims Tribunal has power and jurisdiction to execute its

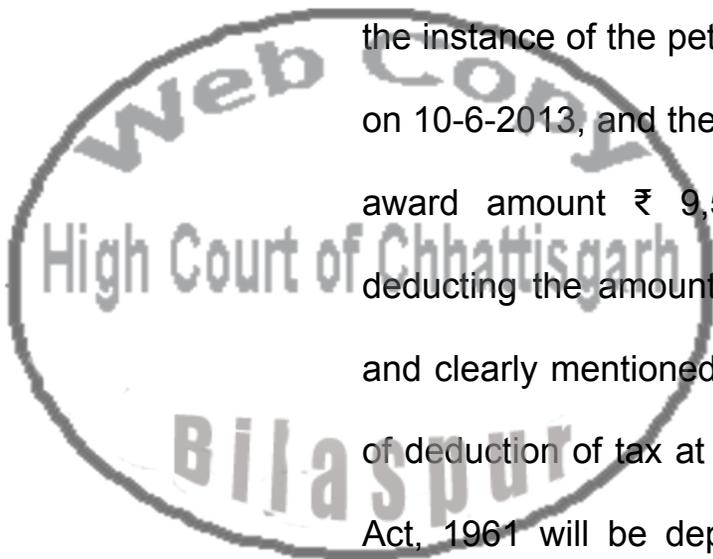
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<sup>1</sup> AIR 1990 Madhya Pradesh 306

award in accordance with provisions contained in the Code of Civil Procedure, 1908 as applicable to the execution of orders and decrees passed by the civil court.

9. Having reached to the above-stated conclusion, question for consideration would be, whether the Claims Tribunal is justified in issuing warrant of arrest against the Officer of the petitioner-Company in the facts of the case?

10. The Claims Tribunal passed an award of ₹ 4,57,000/- along with 9% interest in favour of the claimants and appeal against that award at the instance of the petitioner Company was dismissed by this Court on 10-6-2013, and the petitioner Company ultimately, deposited the award amount ₹ 9,54,975/- before the Claims Tribunal after deducting the amount of ₹ 1,30,744/- towards TDS on 26-9-2013 and clearly mentioned in its memo dated 26-9-2013 that certificate of deduction of tax at source under Section 203 of the Income Tax Act, 1961 will be deposited later, and finally that certificate was deposited before the Claims Tribunal on 30-9-2013, but surprisingly, the Claims Tribunal on 3-7-2014 issued notice to the Branch Manager of the petitioner Company that though an amount of ₹ 9,79,975/- has been deposited but an amount of ₹ 1,42,544/- has not been deposited and called upon the petitioner Company to appear on 28-7-2014 and to explain, but it appears from the record that the petitioner Company failed to respond to such notice and thereafter, on 18-11-2014, an application for warrant of arrest was filed by the claimants which was straightway granted by the learned Claims Tribunal on 18-11-2014, which states as under:-



**“18.11.2014**

एवार्ड धारी की ओर से श्री आर०के० जैन अधिवक्ता।

देनदार बीमा कंपनी की ओर से श्री एन०एन० यादव अधिवक्ता।

एवार्ड धारी की ओर से एक आवेदन पत्र अनावेदक शाखा प्रबंधक नेशनल इंश्योरेंस कंपनी लिमि० के विरुद्ध गिरफ्तारी वारंट जारी किए जाने बाबत पेश किया।

आवेदन पर सुना गया।

अनावेदक बीमा कंपनी को दिनांक 3-7-14 की प्रेषित नोटिस का अभी तक उनके द्वारा जवाब नहीं दिया गया है और न ही शेष एवार्ड राशि का भुगतान किया गया है। उक्त परिस्थितियों को देखते हुए प्रस्तुत आवेदन न्यायोचित प्रतीत होता है।

अतः देनदार बीमा कंपनी को डिक्री के निष्पादन के लिए गिरफ्तारी वारंट जारी किया जावे।

प्रकरण डिक्री के निष्पादन के गिरफ्तारी वारंट प्रतिवेदन हेतु 22-12-14'

सही / -

(रविशंकर शर्मा)

मोटर दुर्घटना दावा अधिकरण  
जशपुर (छ०ग०)'''

11. Thereafter, on 16-12-2014, the petitioner Company on threat of arrest of his officer deposited an amount of ₹ 1,42,544/- before the Claims Tribunal through account payee cheque dated 9-12-2014 and prayed for recall of warrant of arrest issued against their official as unserved. Since, the presiding officer was on leave, the judicial officer looking after the cases of Motor Accident Claims Tribunal, Jashpur heard the matter and directed for recall of the warrant of arrest in view of fact that the balance award amount has already been deposited and matter was directed to be listed on 17-12-2014. The order dated 16-12-2014 states as under:-

**‘दिनांक:- 16.12.2014**

पीठासीन न्यायाधीश महोदय अवकाश पर है, अतः प्रकरण मेरे समक्ष पेश।

देनदार बीमा कंपनी की ओर से श्री एन0एन0 यादव अधिवक्ता ने उपस्थित होकर एक आवेदन पत्र वास्ते प्रकरण में शीर्घ सुनवाई का प्रस्तुत किया। साथ में दो अन्य आवेदन, आवेदन पत्र वास्ते टी0डी0एस0 का निष्पादन प्रकरण में जरिये चेक रूपये 1,42,544/- (एक लाख बयालीस हजार पाँच सौ चवालीस रूपये) का चेक जमा स्वीकार कर पावती प्रदाय करने एवं आवेदन पत्र वास्ते क्लेम निष्पादन प्र0क0 14/2012 में शाखा प्रबंधक, नेशनल इंश्योरेंस कंपनी लिमि. रायपुर के विरुद्ध जारी गिरफ्तारी वारंट अदम तामील वापस बुलाये जाने बाबत् पेश किया।

प्रकरण उक्त आवेदनों पर तर्क हेतु दिनांक 17.12.2014 को पेश हो।

प्रकरण आवेदन पर तर्क हेतु दिनांक – 17.12.2014 ।

सही/-

for मोटर दुर्घटना दावा अधिकरण  
जशपुर (छ0ग0)“

12. On 22-12-2014, the presiding officer was on leave, therefore the Reader fixed the date on 13-1-2015. On that day, the Claims Tribunal observed that warrant of arrest has returned back which is not in accordance with Order 21 Rule 41(3) of the CPC. Thereafter, the presiding officer fixed the case for 30-1-2015 and passed the order directing issuance of warrant of arrest on 30-1-2015 against the Branch Manager of the petitioner Company, which states as under:-

**“30.01.2015**

एवार्डधारीगण की ओर से श्री आर0के0 जैन अधिवक्ता।

देनदार बीमा कंपनी की ओर से श्री एन0एन0 यादव अधिवक्ता।

एवार्ड धारी की ओर से तीन दिवस के भीतर विधिवत तलवाना अदा किए जाने पर देनदार बीमा कंपनी के शाखा प्रबंधक के विरुद्ध आदेश 21 नियम 41(3) व्य0प्र0सं0 के तहत गिरफ्तारी वारंट जारी किया जावे।

प्रकरण दिनांक – 24.02.2015

सही / -  
 (रविशंकर शर्मा)  
 मोटर दुर्घटना दावा अधिकरण  
 जशपुर (छ0ग0)“

13. The petitioner Company has questioned the order dated 30-1-2015 on two counts that petitioner Company is empowered to deduct the amount from award amount at source under Section 203 of the Income Tax Act, 1961 which is strictly in accordance with law and no exception can be taken by the Claims Tribunal and the Claims Tribunal was obliged to accept the same towards the satisfaction of claim amount. This Court in the matter of **New India Insurance Company Limited v. Ramesh Kumar Tamrakar and others**<sup>2</sup> clearly held that in view of the provisions contained in clause (ix) of sub-section (3) of Section 194-A of the Act, if the interest component of the award had been deposited after 1-6-2003, the Insurance Company is duty bound to deduct TDS from the amount of interest paid by it. The above-stated principle of law has again been followed by this Court in the matter of **Oriental Insurance Company Limited v. Sita Kunwar and others**<sup>3</sup> by holding as under:-

“7. Turning back to the facts of the case, it would quite apparent that the award amount inclusive of interest in the present case has been deposited by the petitioner Company on 25.06.2003, 14.07.2003, 28.05.2003, 11.07.2003 and 24.07.2003 i.e. after 1st June, 2003, the date on which clause (ix) of sub-section (3) of Section 194-A of the Act came into force, which obliges the deducter to make any deduction at source on an amount paid by way of the interest on the compensation awarded by the Motor Accident Claims Tribunal. In view of the specific provisions contained in the Income Tax Act, the petitioner Company was duty bound to deduct the

<sup>2</sup> 2011(2) MPHT 61 (CG)

<sup>3</sup> 2015(4) CGLJ 419

amount of income-tax from the amount of interest deposited with the Motor Accident Claims Tribunal for being disbursed to the respondents/claimants.”

14. In light of the above-stated legal position, the Claims Tribunal was obliged to accept the certificate issued under Section 203 of the Act of 1961 towards the valid satisfaction of balance award amount and ought not to have entertained application for issuance of warrant of arrest under Order 21 Rule 32 of the CPC. As such, the Claims Tribunal acted wholly arbitrarily, capriciously and contrary to law in directing the petitioner Company to deposit the amount already deducted towards TDS, rather the Claims Tribunal flouted the statutory provisions as enumerated in Section 203 of the Income Tax Act, 1961, which is unacceptable to this court.

15. The matter did not stop here. The petitioner Company under threat of warrant of arrest issued against the Branch Manager deposited the said amount before the Claims Tribunal on 16-12-2014 and warrant of arrest issued against his Officer was directed to be recalled by the judicial officer in-charge of and looking after the work of Motor Accident Claims Tribunal at Jashpur and the matter was posted before the regular tribunal on 22-12-2014, and thereafter the Presiding Officer of the Motor Accident Claims Tribunal, Jashpur assumed office on 30-1-2015 and again issued warrant of arrest against the Branch Manager of the petitioner Company without looking into the file and ignoring the fact that the petitioner Company has already deducted tax at source under Section 203 of the Income Tax Act, 1961 and deposited the certificate on 30-9-2013 before the Claims Tribunal which is

sufficient compliance of the balance award amount and thereafter at the threat of warrant of arrest issued, the petitioner Company again deposited an amount of ₹ 1,42,544/- to the Claims Tribunal. Issuance of warrant of arrest against the official of the petitioner Company is nothing but a total arbitrary act on the part of the Claims Tribunal in flagrant violation of the provisions contained in Section 203 of the Income Tax Act, 1961, taxing and coercing the petitioner Company to deposit the amount twice by directing arrest of its officer which cannot be sustained that too without complying with the provisions contained in Order 21 Rule 40 of the CPC and accordingly, the impugned order dated 30-1-2015 is quashed being without jurisdiction and without authority of law.

16. Such an order passed by the learned Claims Tribunal on 30-1-2015 is totally uncalled for and totally unauthorized in law. Such a practice on the part of the Motor Accident Claims Tribunal issuing warrant of arrest without complying the procedure of Order 21 Rule 40 of the CPC issuing blanket warrant of arrest despite the order having been complied with, is totally erroneous and uncalled for. Therefore, the impugned order dated 30-1-2015 is quashed being without authority and without jurisdiction. Since the amount of TDS has already been deposited, the amount of ₹ 1,42,544/- subsequently deposited by the Insurance Company is directed to be returned along with interest accrued to that amount forthwith to the petitioner Company. However, the claimants are at liberty to claim adjustment of said TDS amount deposited by the petitioner / Insurance Company while submitting their income tax return (if

any).

17. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

18. This Court appreciates the assistance rendered by Mr. Hari Agrawal, learned *amicus*, in short notice and that be placed on record.

Sd/-  
(Sanjay K. Agrawal)  
Judge

Soma



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.76 of 2015

National Insurance Company Limited

Versus

Smt. Vachan Kour and others

Head Note

Award passed by the Claims Tribunal can be executed in accordance with the provisions contained in the Code of Civil Procedure, 1908.

दावा न्यायाधिकरण (क्लेम्स ट्रिब्यूनल) द्वारा पारित पंचाट (एवार्ड) का निष्पादन सिविल प्रक्रिया संहिता, 1908 में समाहित उपबन्धों के अनुसार किया जा सकता है।

