

**ORDER BELOW EXH.1 & BELOW EXH.8 AND 10  
IN EXECUTION APPLICATION NO.131 OF 2024  
IN MACP NO.1060 OF 2014**

1. The original applicant/D.H. in MACP No.1060 of 2014 has sought execution of the award dt. 14.08.2023 passed by the erstwhile Ld. Member, C.R. 3, MACT, Mumbai, whereby the Opposite parties No.1 and 2/J.D. No.1 and 2 have been held jointly and severally responsible and liable to pay compensation of an amount of Rs.10,08,000/- alongwith interest @7% per annum from the date of application till the date of realisation.

2. The D.H. has sought assistance of this Tribunal for recovery of an amount of Rs.16,78,320/- computed including a cost and interest from 15.07.2014 till 15.01.2024 from J.D. Nos.1 and 2.

3. Upon service of notice under Order 21 Rule 22 of CPC, the J.D. No.1 has appeared and resisted the execution of award against him on the ground that the offending vehicle bearing No.MH-03-BA-6805 owned by him stood insured with the Bajaj Allianz GIC Ltd. by Policy bearing No.OG-13-1911-1803-00002768 for the period from 05.11.2012 to 04.11.2013 whereas the husband of D.H. died in accidental death on 16.06.2013 covered under the validity period of the policy of Insurance. J.D. No.1 has sought to avoid the liability by claiming that the Insurer of the offending vehicle ought to have had been arrayed as

party to the original claim application and that the liability fastened upon him should be indemnified by the Insurer under the terms and conditions of the policy of Insurance of the offending vehicle. J.D. No.1 has sought impleadment of the Insurer as J.D. to the execution application and issuance of notice to it for satisfaction of the award and/or to seek avoidance of the liability under the provisions of Section 149 (2) of the Motor Vehicles Act, 1988.

4. J.D. No.2 has neither appeared nor contested the original claim application nor the present execution proceedings. He could not be served with notice under Order 21 Rule 22 of CPC till passing of this order.

5. The Ld. Advocate Shri S.B. Gadge for the D.H. has opposed the impleadment of the Insurer of the offending vehicle as a judgment debtor to the execution proceedings on the ground that the J.D. No.1 had not raised any pleadings about the existence of any policy of Insurance for the offending vehicle when he appeared before this Tribunal in MACP No.1060 of 2014. He did not even file any written statement nor had produced any copy of the alleged policy of Insurance for the offending vehicle. Now the attempt of the J.D. No.1 to seek the Insurance to be brought on record is nothing but protracting and delaying tactics for avoidance of the liability to satisfy the award under execution.

6. The D.H. has not offered serious resistance for causing impleadment of the Insurer of the offending vehicle as party to the execution proceedings and is ready and willing for carrying out the amendment in the execution proceedings as it would be beneficial for her to seek recovery of the awarded compensation with interest from the Insurer.

7. The Ld. Advocate Shri Sushil Parab for the J.D. No.1 has placed reliance on the observations of the Hon'ble High Court of Andhra Pradesh in the case of **United India Insurance Co. Ltd. Vs. S. Rama Krishna Reddy (2004 LawSuit (AP) 358 = 2005 ACJ 1229)** wherein the Hon'ble Lordship has considered the provisions of Sections 165 to 176 and 149 under Chapter XI and XII of the Motor Vehicles Act, 1988.

8. Similar facts as in the present case, had arisen before the Hon'ble High Court of Andhra Pradesh while deciding the aforesaid case. The relevant observations applicable to the facts of the present case from paragraph 6 to 9 of the decision in the case of **United India Insurance Co. Ltd. Vs. S. Rama Krishna Reddy ( Referred Supra)** are reproduced herein below for ready reference :-

[6] Ordinarily, a decree cannot be executed against persons or agencies, who are not parties to the proceedings in which the decree is passed. The reason is that no liability can be fastened on a person or agency unless they were given an opportunity to defend themselves. The proceedings initiated under the Motor Vehicles Act (for short 'the

Act' for recovery of damages on account of death or bodily injuries involving motor vehicles, however, stand on a different footing.

[7] Taking note of the frequency of accidents involving Motor Vehicles Act and the devastating effects of death or injuries to the Victims and the persons dependent on them, the Parliament has stepped-in, to make necessary provisions in the Motor Vehicles Act, 1939. Insurance of vehicles to cover the liabilities arising out of accidents was made compulsory and adjudication of disputes by Special Tribunals was provided for under Section 110-A onwards. 1939 Act has been replaced by Act 59 of 1988. Based on the past experience and pronouncements of the Courts on the subject, necessary improvements were made. The procedure for adjudication of claims arising out of accidents involving motor vehicles is now provided for under Chapter XII of the Act, comprising of Sections 165 to 176. Chapter XI stipulates the nature and extent of Insurance coverage and the obligations of the Insurers to meet the liabilities. Section 149 makes it obligatory on the part of the Insurers to satisfy the judgments and awards against persons insured, in respect of 3<sup>rd</sup> party risks. Section 149 is very elaborate. For the purpose of this case, it is sufficient to extract Sub-sections (1), (2) and (7) of Section 149 of thereof.

“Section 149 : Duty of Insurers to satisfy judgments and awards against persons insured in respect of third party risks :- (1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) (or under the provisions of Section 163-A) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to

the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor-cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving

license during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non disclosure of a material fact or by a representation of fact which was false in some material particular.

(7) No insurer to whom the notice referred to in Sub-section (2) or Sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in Sub-section (1) or in such judgment as is referred to in Sub-section (3) otherwise than in the manner provided for in Sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.”

[8] A reading of the provisions referred to above discloses that an insurer is liable to satisfy the liability arising out of a judgment or award, if there exists a certificate of insurance. It is immaterial whether the insurance company as made a party to the proceedings giving rise to decree or not. Neither in Chapter XI nor Chapter XII it is made obligatory to implead an insurer in the petitions. Section 149 does not indicate that it is necessary to implead the insurer, before the liability is fastened to it. On the other hand, the use of the expressions “notwithstanding that the insurers may be entitled to avoid or cancel or may have avoided or cancelled the policy” and “as if he were the judgment debtor” presuppose the circumstance that the insurer is not a party to the proceedings, giving rise to the judgment or award. That being the case, the objection of the petitioner herein that unless it was a party to the O.P., it could not have been impleaded in the E.P., cannot be sustained.

[9] It is not as if the petitioner is deprived of any defence and is made liable to pay the amount under the award without being heard. The Parliament

had provided for certain circumstances under which an insurer can avoid the liability and permitted the insurer to put forward such claims even, in execution proceedings. Sub-section (2) of Section 149 provides for as many as four defences for an insurer to avoid the liability and makes it obligatory for it to be provided with such an opportunity in the execution proceedings. Sub-section (7) disentitles the insurer to take any other defences, except those provided for under Sub-section (2). Hence, it cannot be said that the petitioner had suffered any prejudice on account of its being impleaded in the execution proceedings. The question as to whether there existed any policy at all, or whether the petitioner can avoid the liability on the grounds specified in Sub-section (2), can be urged before the Executing Court. If the petitioner is not impleaded on the ground that it was not a party to the proceedings to the O.P., it would defeat the very object of Chapters XI and XII of the Act.

9. Considering that the J.D. No.1 has produced on record alongwith list Exh.9 the photocopy of policy of Insurance bearing No.OG-13-1911-1803-00002768 for the period from 05.11.2012 to 04.11.2013 issued by the Bajaj Allianz GIC Ltd. for New Bajaj Auto Rickshaw bearing Chasis No.22884 and Engine No.24264 in the name of J.D. No.1 and the period of validity covers date of accident in question, which would be just, proper and necessary to accept the request of the J.D. No.1 to implead the Insurer as J.D. No.3 in the execution proceedings since his Ld. Advocate failed to produce the said policy on record of MACP No.1060 of 2014 despite of filing appearance. There would be no prejudice to either D.H. or to the Insurer since the Insurer would have the opportunity to raise permitted

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defences under Section 149 (2) r/w 149 (7) of the Motor Vehicles Act 1988, even in the execution proceedings and the D.H. would be able to recover the amount of the award with interest from either of the J.D. Nos.1 and 3 (Insurer).

10. In view of the observations in the reported case referred above and foregoing discussion, the request of the J.D. No.1 raised in his reply and additional reply at Exh.8 and Exh.10 to the notice of execution proceedings, needs to be accepted in the interest of justice and necessary order needs to be passed. Hence, the following order :-

**ORDER**

1. The request of J.D. No.1 for impleading the Bajaj Allianz GIC Ltd. as J.D. No.3 in Execution Application No.131 of 2024 is hereby allowed.

2. The D.H. shall carryout necessary amendment in the execution application for arraying the Bajaj Allianz GIC Ltd. as J.D. No.3 within two weeks and shall supply the copies of amended execution application for execution proceedings and service of notice on the J.D. Nos.2 and 3.

**(S.E. Bangar)**  
Member, C.R. No.3  
MACT, MUMBAI

Date : 01.11.2025

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