CNR No: PBHO010014912018 CIS No: EXE/77/2018

The New India Insurance Company Limited VS TILAK RAJ etc.

Present: Sh. Salil Chopra Advocate for the insurance company.
Sh. Paramjit Singh Advocate counsel for JD No.1
JD No.2 exparte.

Receipt qua payment of cost by JD No.1 has been produced. Ld. Counsel for JD No.1 has made a statement that today JD has given a cheque bearing no. 015548 dated 5.2.2024 of Rs. 3,50,500/- as the balance amount of amount paid by the insurance company to the claimants. The JD has paid the entire amount paid by the insurance to the claimants and at the same time, Sh. Salil Chopra Advocate counsel for insurance company has also suffered a separate statement that he has received the above said cheque as part payment of awarded amount. The decree holder insurance company reserves the right to recover the remaining amount along with interest by following due process of law. The Ld. Counsel for the JD has submitted that the entire decree has been satisfied by the JD and as such nothing survives in the present execution and as such the attachment of the property of the JD is liable to be released. This contention has been opposed by the Ld. Counsel for the decree holder by arguing that the decree holder insurance company is claiming an amount of Rs. 7,00,290/- so paid to the claimants and further interest @ 10% per annum from the date of filing of application i.e. 6.10.2006 till realization.

Heard. File perused. Although, as per the execution application, the decree holder insurance company is claiming an amount of Rs. 700,290/- along with interest @ 10% per annum from the date of filing of application i.e. 6.10.2006 till realization, but perusal of the award dated 10.12.2009 passed by the court of Sh. Kanwaljit Singh the then Ld. Additional District Judge-cum-MACT Hoshiarpur reveals that an amount of Rs. 5,58,000/- along with interest @ 7.5% from the date of filing of claim application till actual realization was passed in favour of claimants and it was directed that the insurance company shall pay the same to the claimants and thereafter the insurance company has been held entitled to recover the amount from respondent no.1 and 2. Further it has been ordered to the insurance company to deposit the claim amount within one month, failing which the claimants shall be entitled to recover the same with interest @10% per annum. Admittedly the insurance company was only granted recovery rights qua the amount which has been paid to the claimants. The Ld. Counsel for the decree holder does not dispute the fact that an amount of Rs. 7,00,290/- was infact paid to the claimants. That being the position, the insurance company is only entitled to recover the same from the JDs and nothing else. The contention of the Ld. Counsel for the decree holder that interest @10% per annum is also to be recovered, is without any merit as no such direction was passed in the award. The interest of 10% per annum was only payable by the insurance company in case the award was not satisfied within one month. Needless to say that the recovery rights granted to the insurance company were only to the extent of the amount, so paid by it to the claimants. Since, in the present execution the decree holder has paid the amount of Rs. 7,00,500/-, which is more than the amount of Rs. 7,00,290/-, nothing survives in the present execution and no further amount is to be realized by the decree holder. In these circumstances, the present execution is disposed being satisfied, subject to encashment of the cheque given by the JD to insurance company today. Property of JDs which were attached as per order dated 27.3.2023 and as per letter bearing no. R-104 dated 15.3.2023 is ordered to released after encashment of cheque. The decree holder is directed to produce the proof regarding encashment of the cheque within 10 days from today positively. File be consigned to record room Hoshiarpur.

Announced

(Puneet Mohan Sharma)
Additional District Judge
UID NO . PB00167

Date of Order: 05-02-2024
Malika