

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1036 of 2016

1. Shri Ram General Insurance Co. Ltd. Fourth Floor, Maruti Heights Amanaka Raipur Tehsil and Distt. Raipur, Chhattisgarh(Insurer of Truck C.G. 05/ D/ 4643)

---- Appellant

Versus

1. Kamlesh Nirmalkar S/o Shri Hari Nirmalkar, aged about 31 years, Resident Kissan Para, Gobra Navapara, Tahsil Abhanpur, Distt. Raipur, Chhattisgarh (Claimant)
2. Shiv Kumar Sahu S/o Bharat Lal Sahu, Resident Kissan Para, Gobra Navapara, Tahsil Abhanpur, Distt. Raipur, Chhattisgarh(Driver of Truck C.G. 05/ D/ 4643)
3. Kamal Narayan Sahu S/o Shri Devmani Sahu, Resident Gram Kumhe Tahsil Rajim, Distt. Gariyaband, Chhattisgarh(Owner of Truck C.G. 05/ D/ 4643)

---- Respondents

19/10/2016	Shri Deepak Gupta, Advocate for the appellant. None for the respondents, though respondent No.1 is served on 12-10-2016, respondent No.2 is served on 06-10-2016 and respondent No.3 is served on 07-10-2016. Heard on I.A.No.1/2016 for exemption from filing the certified copy of order passed under Section 170 of the Motor Vehicles Act, 1988 (in short 'the Act, 1988'). Learned counsel for the appellant places reliance on an order passed by the Hon'ble Apex Court dated 23-10-2013 in Civil Appeal No. 9427/2013 (Special Leave Petition (C) No. 22535/2009) - Bajaj Allianz General Insurance Company Ltd. -v- Kamla Sen and others, in which Hon'ble Apex Court quoted para 19 and 20 of the judgment in the matter of United Insurance Co. Ltd. -v- Shila Datta and others reported in (2011) 10 SCC 509 which are reproduced below :- “(19) Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the Tribunal Under Section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to	

contest the matter by raising all grounds, without being restricted to the grounds available Under Section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party.

(20). When a statutory notice is issued Under Section 149(2) by the Tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can, however, be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal Under Section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim."

The Hon'ble Apex Court set aside the impugned judgment and order passed by the High Court whereby the High Court dismissed the appeal of the appellant on the ground that since it had failed to move an application under Section 170 of the Act hence it was not open to the appellant to challenge the award of the Motor Accident Claims Tribunal, Hoshangabad in Claim Case No. 21/2008 dated 28-7-2008 except on the grounds provided under Section 149 of the Act and with this upheld the quantum of compensation as awarded by the Tribunal.

Learned counsel for the appellant submits that in light of above cited case law, the appellant is not required to file the order of the Tribunal passed under Section 170 of the Act, 1988.

As submitted in this behalf and after perusal of the case law cited, in the considered view of this Court, I.A. No. 1/2016 for

exemption from filing certified copy of the order passed under Section 170 of the Act, 1988 deserves to be allowed.

Consequently, I.A.No.1/2016 is hereby allowed on the grounds and provision of law as settled by the Hon'ble Apex Court.

Also heard on I.A.No.2/2016 under Section 173 of the Act, 1988 read with Section 5 of the Limitation Act, 1963 for condonation of delay in filing the instant MAC as the same is time barred by 145 days.

On due consideration and after perusal of I.A.No.2/2016, this Court is of the considered view that the appellant has satisfactorily explained the delay caused in filing the instant MAC. Consequently, I.A.No.2/2016 is hereby allowed and the delay of 145 days in filing the instant MAC is hereby condoned.

Also heard on admission.

The instant MAC is admitted for consideration.

Registrar (Judicial) is directed to requisition the record of the concerned Tribunal through usual mode and fax mode.

Also heard on I.A.No.3/2016 for grant of stay.

Learned counsel for the appellant would submit that the appellant duly proved that the concerned motor vehicle in question was commercial vehicle insured only for the purposes of goods transportation, as per policy no one except driver and helper is entitled to travel in the said truck. The conditions of the policy were duly proved. The appellant has a good chance to succeed in the instant MAC, hence, effect and operation of the execution against the present appellant may be stayed till disposal of the present MAC.

Perused the impugned award, facts regarding type of the vehicle, its insurance and other relevant evidence and appreciation of the Court below, without commenting anything on its merit, I.A.No.3/2016 is hereby allowed. It is directed that

subject to payment of 50% of the award amount including the interest till date before the executing court within 30 days from now, the execution of remaining award amount shall remain stayed untill disposal of this MAC. It is further directed that the amount so deposited shall not be permitted to withdraw in favour of applicant/respondent No.1 without order of this Court.

The appellant may file copy of this order before the executing court for compliance.

Registrar (Judicial) is also directed to send a copy of the order to the concerned Tribunal/executing court for compliance through usual mode and fax mode immediately.

List the matter for final hearing in its due course.

Sd/-
(Chandra Bhushan Bajpai)
Judge