

*This petition coming on for admission this day, the court passed the following:*

**ORDER**

This petition is filed challenging the order dated 01/05/2018 passed by learned 1st Additional Claims Tribunal, Tikamgarh in Claim Case No.03/2012, Execution Case No.155/2017 whereby learned Claims Tribunal has directed the owner of the offending vehicle to furnish a bank guarantee for the sum which has been deposited by the insurance company in the Tribunal and refused to disburse the awarded amount in favour of the claimants till such security is furnished by the owner.

2. Learned counsel for the claimants submits that this is arbitrary and illegal.

3. Shri Aditya Narayan Sharma, learned counsel for the insurance company, in his turn, submits that the order of the High Court passed in M.A. No.517/2015 on 12/5/2016 is crystal clear. It has extracted para-13 of the judgment of Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. Vs. Challa Bharathamma and others, (2004) 8 SCC 517** and by quoting that paragraph held that the amount is to be deposited by the insurance company, but it will be disbursed only on furnishing of the security by the owner of the offending vehicle.

4. In view of the such judgment of the Coordinate Bench, it is submitted that it is not open to the Court to review that order, therefore, the amount deposited by the insurance company cannot be claimed by the claimants unless that guarantee is furnished by the insured i.e. owner of the offending vehicle.

Shri Sharma, learned counsel for the insurance company, further submits that

order of Tribunal is in pursuance of the order passed by the High Court, therefore, it does not call for any interference.

5. After hearing learned counsel for the parties and carefully going through the judgment of Hon'ble Supreme Court in the case of **Challa Bharathamma and others (supra)**, para-13 reads as under :

“13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the Executing Court concerned as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the Regional Transport Authority concerned. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured.”

6. Thus, it is evident that purpose of the judgment is that keeping in mind the beneficial object of the Motor Vehicles Act, insurance company has been directed to pay the claim amount and liberty has been given to the insurance company to recover the same from the owner, driver of the offending vehicle.

Same is the ratio of the judgment of Hon'ble Supreme Court in the case of **Pappu and others Vs. Vinod Kumar Lamba and another, (2018) 3 SCC 208.**

7. Direction is that when a vehicle is insured and if there is any infraction of the terms and conditions of the policy, then claimant may not be allowed to suffer and the amount may be recovered from the insurance company which in turn can always be recovered from the owner, driver of the offending vehicle.

8. In para-13 of the judgment of Hon'ble Supreme Court in the case of **Challa Bharathamma and others (supra)**, the Hon'ble Supreme Court has held that *before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned.* Thus, it is held by the Hon'ble Supreme Court that insurance company will be entitled to raise a dispute before the executing Court against the owner of the vehicle and that dispute can be directly entertained and there will be no requirement of approaching the Civil Court or any other Court by filing a civil suit for recovery of the dues of the insurance company.

9. In the case of **Pappu and others (supra)** which is a judgment of three Judges Bench and which will have more persuasive value, than that of two Judges Bench in the case of **Challa Bharathamma and others (supra)**. Hon'ble Supreme Court in the case of **Pappu and others (supra)** placed reliance on the judgment passed in the case of **National Insurance Co. Ltd.**

**Vs. Swarn Singh, (2004) 3 SCC 297**, has clearly held in Para-18 and quoted the excerpt of Paragraph-110 of **Swarn Singh (supra)** as under :

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(iv) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunal in interpreting the policy condition would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act."

In sub-para (x) Hon'ble Supreme Court has held as under :

"(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of [Section 149\(2\)](#) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under [Section 174](#) of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of [Section 168](#) of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."

10. In the present case, since the owner insured has already appeared and he has failed to satisfy the requirement of the orders of the Coordinate Bench of this Court and the judgment of Hon'ble Supreme Court and has not furnished the security, then the course open to the Tribunal is as prescribed in the judgment of three Judges in **Pappu and others (supra)** and by no stretch of imagination, that amount can be withheld by the Tribunal. It is interesting to note that this judgment in the case of **Pappu and others (supra)** was delivered on 19th January, 2018. All the members of the district judiciary have been given a software of SCC by the High Court. Thus, this judgment was available to the concerned Additional Judge of the Tribunal. But, instead of applying himself to the said judgment of Hon'ble Court, which authorises the Tribunal to issue a certificate which can be executed as a RRC, Tribunal became a tool in the hands of the insurance company causing further damage to the claimants by not disbursing the amount by giving narrow interpretation to the judgment of the High Court.

11. Thus, when examined in the above light and also the act of delinquency on the part of the insurance company in not making an application to the Tribunal for attachment of the offending vehicle in terms of the ratio of the judgment rendered by Hon'ble Supreme Court in the case of **Challa Bharathamma and others (supra)**, by no stretch of imagination, for the complacency of the insurance company, the claimants can be made to suffer. If this interpretation as has been given by the Tribunal or the Coordinate Bench of this High Court is allowed to stand, then it will frustrate the basic purpose of the socially beneficial legislation i.e. in the Motor Vehicles Act, therefore, instead of giving such narrow interpretation, and this Court being fortified by the three Judges Bench of Hon'ble Supreme Court in the case of **Pappu and**

**others (supra)**, it is directed that the amount of claim along with interest be disbursed in favour of the claimants immediately and the remedy will be available to the insurer as per the judgment of Hon'ble Supreme Court in the case of **Pappu and others (supra)** or as per the judgment of Hon'ble Supreme Court in the case of **Challa Bharathamma and others (supra)** where they can seek attachment of the offending vehicle or obtain an RRC certificate.

12. In above terms, this petition is disposed of.

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**(VIVEK AGARWAL)  
JUDGE**