

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL REVIEW APPLICATION NO.5/2012
IN
S.B. CIVIL MISC. APPEAL NO.1514/2003
National Insurance Company Ltd. vs. Smt. Vimlesh & Ors.

Date of order : 30/11/2012.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri G.P. Sharma for the petitioner.
Shri Ganesh Joshi)
Shri Raj Kumar Garhwal on behalf of Dr. Mahesh Sharma) for
respondents.

This review petition has been filed by the petitioner with the grievance that no specific direction has been passed by this Court in its judgement dated 15.11.2011 in regard to 50% award amount, which was disbursed to the claimants, whereas it has been held by this Court that the insurance company is not liable to pay compensation to the claimants and that the owner would be liable to pay such compensation. It is therefore prayed that this Court may rectify/clarify the judgement requiring the insurance company to recover the amount of compensation from the owner and driver rather than recovering the same from the claimants and then recover the same from them.

Learned counsel for the respondents, however, invited attention of the Court towards the order of this Court dated 21.2.2004 and contended that originally this Court by order dated 11.7.2003 directed that if the amount of award alongwith accrued interest as per order of the Tribunal is deposited with the Tribunal within a period of four weeks, the execution of the award shall remain stayed till next date. When the matter was next listed before the Court on 21.2.2004, the Court was informed that the entire amount has already been deposited in compliance of the order of this Court dated 11.7.2003. It was on hearing the learned counsel for both the parties and keeping in view the entire facts, 50%

of the amount deposited was ordered to remain deposited in FDR strictly in terms of the award and the remaining amount was ordered to be dispensed provided the claimants furnish solvent security to the satisfaction of the Tribunal that the claimants would refund the said amount within interest @ 9% per annum in case the appellants succeeds in appeal. The stay application in terms of the aforesaid said direction was disposed of.

Even if no specific order was passed by this Court on this aspect in the judgement dated 15.11.2011, but the stay application has been finally decided in terms of the aforesaid order. The order would still be operative and claimants cannot be allowed to go back on their own undertaking of providing solvent security and the understanding given before the Court at the time of withdrawal of money. However, the claimants would be free to recover said money from the owner and the driver in execution of the award.

The review petition is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

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All corrections made in the judgement/order have been incorporated in the judgement/order being emailed. (Ravi Sharma,P.A.)