

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.318 of 2013

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1. Icici Lombar (Motor) General Insurance Company Limited, Through Branch Manager, Icici, Lombard (Motor) General Insurance Co. Ltd., Mumbai, Office Zenith House, Keshavrao Khale Marg, Mahalaxmi, Mumbai- 400034, Appeal And Appellant Through The Legal Manager/ Authorized Signatory, Icici Lombard General Insurance Limited, Office At Uma Complex, Frazer Road, Patna.

.... Appellant/s

Versus

1. Aman Kumar S/O Lt. Suresh Singh @ Suresh Chandra Resident Of Mohalla- Station Road (Pali), P.O- Dalmianagar, P.S- Dehri-On- Sone, District- Rohtas.
2. Anurag Kumar @ Rinku S/O Lt. Suresh Singh @ Suresh Chandra Resident Of Mohalla- Station Road (Pali), P.O- Dalmianagar, P.S- Dehri-On- Sone, District- Rohtas.
3. Radhika Devi W/O Late Vishwanath Singh Resident Of Mohalla- Station Road (Pali), P.O- Dalmianagar, P.S- Dehri-On- Sone, District- Rohtas.
4. Mohammad Farooq S/O Naimuddin Resident Of Village- Lal Bihara, Dhoomnganj, Chhapia Dhoomnganj, Allahabad (U.P),

.... Respondent/s

with

Miscellaneous Appeal No.280 of 2013

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Aman Kumar & Ors.

.... Appellant/s

Versus

The I.C.I.C.I. Lombard (Motor) General Insurance Co. & Ors.

.... Respondent/s

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Appearance :

(In MA No.318 of 2013)

For the Appellant/s : Mr. Rajesh Kumar Singh, Adv.

For the Respondent/s : Mr. Durgesh Kumar Singh, Adv.

(In MA No.280 of 2013)

For the Appellant/s : Mr. Mr. Rajesh Kumar Singh, Adv.

For the Respondent/s : Mr. Durgesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

2 28-08-2015

As both these appeals arise out of common judgment

dated 18th December 2012 and award dated 11th March 2013

passed in M.V.Claim case No. 39 of 2010, they are being disposed of by common order.

In the present case, this Court is not required to deal with the facts of the case elaborately due to the reason that the matter is to be remitted back on limited grounds.

Suresh Singh @ Suresh Chandra along with Dip Chand Prasad was going to Bihar Sharif by the Steam car bearing Regd no. U.P. 78L /8710 and when they had reached near village Jehanabad Vanarasi Highway by-pass at 9:00 P.M. driver of the truck bearing Regd. No. UP 70AT /0174 dashed against and crushed the car in which Suresh Singh died on the spot.

In the beginning Aman Kumar and Anurag Kumar were party to the claim case but when an objection was raised by the Insurer about the maintainability of the case in absence of Radhika Devi the Tribunal vide order dated 28th March 2013 the allowed her to be added and accordingly she was added as party to the claim case on 12th April 2013.

The Court on the basis of materials available on the record has computed the compensation amount of Rs.28,34,500/- in favour of claimants which is under challenge before this Court.

The ground of challenge has been made by the counsel for the Insurance Company that though Radhika Devi was

added as party to the claim application but neither she herself appeared nor she appointed any Advocate to conduct the case and she was a fictitious lady which is clear from the fact that in one Memo of appeal she has marked signature and in another she has put her thumb impression.

In nut shell claim has been made by the Insurance Company that Radhika Devi is a fictitious lady so much so that no *Vakalatnama* was filed by her, as such, the order is completely illegal.

Counsel for the claimant is not in a position to dispute the fact that during the Tribunal proceeding, even after addition of Radhika Devi as party, she never appeared herself to lay her claim nor she authored any person to contest her case.

Having considered the rival contention of the parties, the person can contest his/her case by appearing herself as well as she can authorize any Advocate to conduct the case, but in absence of same, mere addition of Radhika Devi as a party, she has not taken any step to show that she was interested to assert her claim.

This shows that the court below under wrong impression has passed award even in favour of Radhika Devi, as such, the award in favour of fictitious lady makes the whole award

completely illegal, Accordingly, the impugned award is set aside and the matter is remanded back to the court below with a direction to decide the case in accordance with law. It is made clear that this Court is not touching the merit of the case.

The statutory amount which is lying in this Court be remitted to the court below which will be subject to the result of the case. The court below is also directed to complete the trial within a period of nine months.

With the observation/directions, as above, these two appears are disposed of.

(Shivaji Pandey, J)

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