IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3900 of 2012

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Branch Manager,United India Insurance Co.Ltd.

.... Petitioner/s

Versus

Arun Singh & Ors

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Durgesh Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

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4 30-10-2015 **1.** Heard the learned counsel, Mr. Durgesh Kumar Singh, for the petitioner. Notices were issued to the respondents in admission matter. In spite of service of notice, nobody appeared on behalf of the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner, i.e., Branch Manager, United India Insurance Compan6y Ltd. against the order dated 17.01.2007 passed by the Addl. District & Sessions Judge, Ist Track Court 3, Khagaria-cum- Accident Claim Tribunal in Claim Case No.26 of 2004 whereby the Court below rejected the review application filed by the petitioner for review of the order dated 7.9.2006 directing the petitioner to pay Rs.50,000/- under Section 140 of Motor Vehicle Act along with the owner of the tractor in question.

3. The learned counsel for the petitioner submitted that in the written statement itself, it was specifically stated that the occurrence

took place on 13.06.2003 whereas the tractor in question was insured with the petitioner from 08.07.2003. In other words, on the date of accident, the tractor in question was not insured with the petitioner but the Court below without considering this case of the petitioner directed the petitioner to pay Rs.50,000/- under Section 140 of the Motor Vehicle Act along with the owner of the tractor. Therefore, the petitioner filed application for review of the said order bringing these apparent error on the face of the record but the Court below rejected the said application only on technical ground taking into consideration that the application has been leveled under Section 115 and 151 CPC. According to the learned counsel, the Court below has rejected the application only on the technical ground. It is settled principle of law that mere lebelling of the application cannot be made the basis for rejection because when the petitioner was praying for review, the Court below should have treated the application as an application under Order 47 Rule 1 read with section 114 CPC and should have directed to register it as a separate review application. On these ground, the learned counsel submitted that the impugned order be set aside.

4. Perused the order dated 17.01.2007 which is Annexure '4' to this writ application. From perusal of the order, it appears that the Court below has rejected the application only on the ground that the

provisions mentioned in the application are wrong. In my opinion, if the provisions were wrong then the Court below should have directed the petitioner to make necessary correction in the provision of law in the application but that should not have been made basis for rejection of the application. It is settled principle of law that the intention of the parties or the relief claimed by the parties is the decisive factor for deciding the case as to whether it comes under which provisions of which law. The petitioner is praying for review of the earlier order on the ground that there is apparent error on the face of the record. This was the case of review. In such circumstances, the Court below should have directed the petitioner to level it as a review application instead of rejecting the petition.

5. In view of the above facts and circumstances, this writ application is allowed and the impugned order is set aside. The matter is remanded to the Court below for registering the said application filed by the petitioner as a review application treating the application as an application under Order 47 Rule 1 read with Section 114 CPC and decide the same according to law after hearing the parties.

(Mungeshwar Sahoo, J)

Sanjeev/-

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