IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.327 of 2003

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Divisional Manager, United India Insurance Co. Ltd. Murarpur Road, Gaya

.... Appellant/s

Versus

1. Sri Yugal Kishore Pd. Singh, son of Sri Mushan Mahto
2. Janjana Kumari, D/O Yugal Kishore Pd. Singh
3. Aabha Kumari, D/O Yugal Kishore Pd. Singh, resident of Junethi, P.S. Silaw, District Nalanda

.... Respondent/s

with

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Miscellaneous Appeal No. 328 of 2003

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Divisional Manager,United India Insurance Co. Ltd. Murarpur Road, Gaya

.... Appellant/s

Versus

1 Sunil Kumar, son of Kishorei Prasad

2. Rishu Kumari, son of Sunil Kumar, minor daughter of Sunil Kumar under guardianship of her father Respondent no.1, both resident of Village Karanpur, P.S. Giriyak, District Nalanda

.... Respondent/s

with

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Miscellaneous Appeal No. 329 of 2003

==

Divisional Manager, United India Insurance Co. Ltd. Murarpur Road, Gaya

.... Appellant/s

Versus

1. Yugal Kishore Pd., son of Sri Mushan Mahto
2. Janjana Kumari, D/O Yugal Kishore Pd. Singh
3. Aabha Kumari, D/O Yugal Kishore Pd. Singh, resident of Junethi, P.S. Silaw, District Nalanda

.... Respondent/s

with

==

Miscellaneous Appeal No. 330 of 2003

==

Divisional Manager, United India Insurance Co. Ltd. Murarpur Road, Gaya

.... Appellant/s

Versus

1. Vishnu Deo Prasad, son of late Keshar Mahto
2. Nitish Kumar, son of Bishnu Deo Prasad, resident of Village Nann, P.S. Silaw, District Nalanda
3. Jainendra Kumar, son of Suraj Deo Pd. Singh, resident of Karanpur, P.S. Giriyak, District Nalanda
4. Divisional Manager, Oriental Insurance Co. Ltd. Main Tower Chowk, Gaya

5. Deepak Kumar Singh, son of late Babu Singh, resident of Urimari, P.S. Soyal, District Hazaribagh

.... Respondent/s

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Appearance :

(In MA No. 327 of 2003)

For the Appellant/s : Mr. Ashok Kumar

For the Respondent/s : Mr. RAMSUHAWAN SINGH

Mr. Chandra Moleshwar

(In MA No. 328 of 2003)

For the Appellant/s : Mr. Ashok Kumar

For the Respondent/s : Mr. Ram Suhawan Singh

Mr. Chandra Moleshwar

(In MA No. 329 of 2003)

For the Appellant/s : Mr. Ashok Kumar

For the Respondent/s : Mr. RAM SUHAWAN SIGH

Mr. Chandra Moleshwar

(In MA No. 330 of 2003)

For the Appellant/s : Mr. Ashok Kumar

For the Respondent/s : Mr. Ram Suhawan Singh

Mr. Chandar Moleshwar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-09-2015

Heard learned counsel for the appellant and learned counsel for the respondent.

Since all the appeals have arisen out of the same order, they have been heard together and are being disposed of by this common judgment.

In the aforesaid appeals the appellant is challenging the judgment and award dated 14.8.2003/31.7.2003 passed by the 4th Additional District and Sessions Judge-cum-MACT, Nawada in Claim Case No.37 of 2001/26 of 2003, 37 of

2001/26 of 2003, 38 of 2001/23 of 2003 and 41 of 2001/25 of 2003.

Brief facts of the case is that on 6.4.2001 at 12.45 A.M. the victim and other persons after performing the Mundan of Saurabh Kumar at Deoghar all of them, namely, Saurabh Kumar, Jiria Devi, Asha Devi and Sonaro Kumar were returning to their villages on a tracker bearing registration no. BR-21-9295, driver was driving the vehicle at a high speed, rashly and negligently. When the tracker reached near village Orhanpur, truck bearing registration no. BR-3-9622 coming from opposite side rashly and negligently collided with the tracker due to which the aforesaid four persons died along with the driver, Rosan on the spot. As per claimant Saurabh has been shown to be 19 years, Jiria Devi was shown to be 50 years, Asha Devi was shown to be 28 years and Sonaro Devi was shown to be 32 years. Monthly income of four deceased was Rs.3,000/- each per month. The police registered Nawadah Moffassil P.S. Case No.29 of 2001 under Sections 279, 304 (1A), 398 and 427 of the Indian Penal Code.

The owner of the vehicle and Insurance Company appeared, raised question of maintainability and so much so the Insurance Company has specifically asserted that cover note no.320123 filed by the claimant was not issued from the office of the Divisional Manager, United Insurance Company Limited, Gaya (opposite party no.4) in favour of the vehicle involved in the accident.

The Tribunal has framed four issues and issue no.2 has been specifically formulated about the insurance of the vehicle. The Tribunal in paragraph 9 has recorded that claimant has filed cover note which was marked as AnnexureA/8 but has discarded the evidence of the Insurance Company about having not been insured the said vehicle even though one of the witnesses from the opposite party side has proved letter which was marked as Ext. A/4 where it was mentioned by the Assistant Administrative Officer of the Insurance Company that cover note of insurance of truck produced by the claimant is forged and fabricated and the same was not issued from any office of the opposite party. The court has bursh aside and discarded the evidence of witness of opposite party no.4 on the ground that P.W.1 in his evidence has accepted about maintenance of a register in the office keeping details of entire policy holders and that was produced before the Tribunal and on that ground the claim of the Insurance Company has been discarded. On the direction of this Court the Insurance

Company has filed an affidavit sworn by Divisional Manager as well as investigator where they have specifically stated that cover note that has been filed by the claimant is fraudulent document cannot be a basis to direct the Insurance Company to pay the compensation amount.

This Court feels that if purported cover note is really fraudulent document on that basis the Insurance Company cannot be held liable to pay the compensation. In that event the owner of the vehicle will be held responsible to make payment.

Looking to the facts and circumstances of the case and for the ends of justice it will be appropriate to remand back the matters to the Tribunal with a direction to the Insurance Company to produce the register mentioning the details of insured persons with vehicle number. The parties will be at liberty to lead the documentary as well as oral evidence as aforesaid and Tribunal will record a finding about the genuineness of the cover note produced by the claimant. This Court is not giving any opinion on the genuineness of the cover note produced by the Insurance Company to show that the vehicle in question was covered under the Insurance Company. The Tribunal will decide the case within a period of three months from the date of receipt of the file.

In view of plea taken by the Insurance Company, it is directed to pay the computed amount, in the event the cover note produced is found to be a fabricated document, the Insurance Company will be at liberty to recover the amount from the owner of the vehicle.

Accordingly all the appeals are allowed. The statutory amount deposited in this Court in each case will be remitted to the court below and the same will be paid to the claimants that will be adjusted against computed amount.

Office is directed to send back the lower court records to the court below forthwith.

(Shivaji Pandey, J)

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