IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.198 of 2011

==

National Insurance Company, Ltd. Gaya through Sri Anjani Kumar, A.O. cum and Duly constituted Attorney National Insurance Company Ltd., Regional Office 4th Floor Sone Bhawan, B.C. Patel Road, P.O. G.P.O., P.S. Sachiwalaya Patna, District-Patna (Opposite Party No.1)

.... Appellant/s

Versus

1. Sri Akhilesh Kumar Singh, son of R.K. Singh, Resident of Pradhana, P.O. Kabra, P.S.- Konch, District Gaya (Opposite Party No. 2).
2. Congress Yadav, son of Late Sitaram Yadav ….(Claimant No.1)
3. Ranjan Yadav, son of Congress Yadav (Minor)…(Claimant No.2). under the guardianship of his father respondent no.1. Both residents of village Mayapur, P.O. and P.S.- Goh, District Aurangabad at present resident of village Nehora, P.O. and P.S.- Konch, District- Gaya.

.... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Ashok Kumar Priyardarshi, Advocate.
For the Respondent No.1	:	None.
For the Respondent nos. 2 and 3	:	Mr. Ravindra Kumar Sinha, Advocate.

==

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 18-03-2015

Heard learned counsel for the appellant and the learned counsel for the respondent nos. 2 and 3 and perused the record.

2. The present miscellaneous application has been filed, under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as the Act) by the opposite party no.1/appellant, National Insurance Company Ltd., against the judgment/award dated 14.01.2011/24.01.2011 passed in M.V. Claim Case No. 05 of 2010/ 81 of 2010 by the Additional District Judge Fast Track Court-I, Motor Accident Claims Tribunal, Gaya, whereunder the claim petition of the respondent nos. 2 and 3 is allowed with direction to the opposite party

no. 1/ appellant, National Insurance Company, to pay Rs.2,45,100/- with interest @ 6% per annum from the date of the filing of the claim petition, i.e., 27.03.2010 within two months.

3. The short fact of the case is that Lalita Devi, wife and mother of claimants/respondent nos. 2 and 3, was dashed at Dulah Bigha Canal on 05.01.2002 at 2.30 P.M. by the Truck bearing registration no. WB-03A-1057 (hereinafter referred to as the offending vehicle). The police of Goh Police Station reached at the place of occurrence and recorded the statement of Lalita Devi on which basis Goh P.S. Case No. 02 of 2002 was instituted under Sections 279, 337, 338 and 304A of the Indian Penal Code. Thereafter, Lalita Devi died and postmortem of her dead body was conducted at A.N.M.M.C.H., Gaya by Dr. Arbind Prasad. After investigation, police submitted the charge sheet in the aforesaid Sections against Manik Lal Yadav, driver of the offending vehicle. Further case is that deceased was hale and healthy and used to earn Rs.200/- per day by selling the vegetables. The further case is that offending vehicle was insured with O.P. No. 1, National Insurance Company at the time of accident.

4. In spite of notice, opposite party no. 2/respondent no.1, owner of the offending vehicle, did not appear. While opposite party no.1/appellant appeared and filed the written statement raising

usual defence with defence that truck in question had temporary permit with effect from 20.10.2000 to 02.11.2000 for carrying the goods but on the date of accident, i.e., 05.01.2002, there was no valid permit to carry the goods as required under Section 65 of the Motor Vehicle Act.

5. After hearing the parties and perusing the evidence the Claims Tribunal, allowed the claim petition of respondent nos. 2 and 3 with direction to the opposite party no.1/appellant, National Insurance Company Limited, to pay compensation Rs.2,45,100/- (Rupees two lac forty five thousand one hundred) to the claimants/respondent nos. 2 and 3 with interest @ 6% per annum from the date of filing of the claim petition, i.e., 27.03.2010 within two months.

6. Learned counsel for the appellant, National Insurance Company Limited, submits that it would appear from Exhibit-A (photo copy of the temporary permit) that permit for the offending vehicle was issued only from 20.10.2000 to 02.11.2000 by the D.T.O., Gaya, and the accident took place on 05.01.2002. As such, there was no valid permit of the offending vehicle on the date of accident and there is violation of the insurance policy in terms of Section 149(2) (a)(i) of the Motor Vehicles Act. Hence, opposite Party No. 1/appellant is not liable to pay the compensation to the

claimants/ respondent nos. 2 and 3 but the tribunal has illegally directed the appellant National Insurance Company to pay compensation to claimant-respondent nos. 2 and 3.

7. On the other hand, learned counsel appearing on behalf of the claimants/respondent nos. 2 and 3 submits that the offending vehicle was insured with the appellant, National Insurance Company, on the date of accident. While it has safeguard to raise defence by the National Insurance Company/appellant, under Section 149(2) (a)(i) of the Motor Vehicles Act, about violation of the terms and conditions of the insurance policy but National Insurance Company, cannot disown its liability on the ground of breach of contractual policy to pay the compensation to third party.

8. Exhibit A is the photo copy of the temporary permit, which has been marked at the instance of O.P. No. 1-appellant National Insurance Company in which temporary permit of offending vehicle is shown for 20.10.2000 to 02.11.2000. Issue No. 4 is related to violation of the terms and condition of the insurance Policy. The learned Tribunal in deciding in issue no 4 has arrived at conclusion that since the offending vehicle was insured at the time of accident, hence, opposite party no.1, National Insurance Company Limited will be liable to pay the compensation. If there is breach of the policy of the condition about expiry of the permit on the date of accident,

Insurance Company is free to recover the amount of compensation from the owner of the truck.

9. In case of S. Iyyapan versus United India Insurance Company Limited, (2013) 7 Supreme Court Cases 62, the Hon'ble Apex Court held in paragraphs 16 and 17 as under.

> *"16. The heading "Insurance of Motor Vehicles against Third-Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of the 1939 Act) itself shows the intention of the legislature to make third-party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons traveling in vehicle or using the road from the risk attendant upon the user of the motor vehicle on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force.*
>
> *16. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,*

(i) the vehicle was not driven by a named person,

(ii) it was being driven by a person who was not having a duly granted licence, and

(iii) person driving the vehicle was disqualified to hold and obtain a driving licence."

10. It is crystal clear from the aforesaid decision of the Hon'ble Apex Court that insurer cannot disown its liability to pay the compensation of third party on the ground of violation of terms and conditions of the insurance policy as detailed under Section 149(2)(a)(i) of the Motor Vehicles Act. It is for insurer to proceed against the insured for recovery of the amount of compensation in the event of violation of the terms and conditions of the insurance policy.

11. As such, I do not find any illegality and infirmity in the impugned judgment/award dated 14.01.2011/24.01.2011. Accordingly, this miscellaneous application is dismissed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

U			