IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.102 of 2013

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1. Narendra Kumar Singh S/O Late Ram Chandra Singh R/O D1/03 Peoples Co - Operative Society, Kankarbagh, Patna - 10

.... Appellant/s

Versus

1. Branch Manager National Insurance Co. Ltd., Nawada, Rajendra Nagar, District Nawada
2. Smt. Sumitra Sinha W/O Late Virendra Kumar Singh R/O Mohalla - New Area, Police Station - Nawada, District - Nawada
3. Kumari Rashmi D/O Late Virendra Kumar Singh R/O Mohalla - New Area, Police Station - Nawada, District - Nawada
4. Diwakar Kumar S/O Late Virendra Kumar Singh R/O Mohalla - New Area, Police Station - Nawada, District - Nawada
5. Bibhakar Kumar S/O Late Virendra Kumar Singh R/O Mohalla - New Area, Police Station - Nawada, District - Nawada
6. Sudhakar Kumar S/O Late Virendra Kumar Singh R/O Mohalla - New Area, Police Station - Nawada, District - Nawada

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Niraj Kumar, Advocate.
For Respondent No.7 : Mr. Vikash Chandra Srivastava,
For Insurance Company: Mr. Arun Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 14-12-2015

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

2. The present appellant is the owner of Scooter vide registration no. BPY-3114. The aforesaid Scooter met with an accident with a bus vide registration no. BPL-8582.

3. Brief facts of the case is that brother of the owner of Scooter was driving the Scooter as aforesaid which met with an accident at N.H.31 by the aforesaid bus, led to death of the

victim at the spot as well as the said Scooter was also badly damaged.

4. Learned counsel for the owner submits that the said Scooter was insured by the National Insurance Company and at the time of accident it was under the valid insurance. The court below while deciding the issue has found, the case of contributory negligence and it has been decided that 70% of compensation amount will be born by the Insurance Company which has insured the bus and as the Scooter was not insured the owner of the Scooter will pay the rest 30% amount of compensation.

5. Learned counsel for the appellant submits that in paragraph 13 of the written statement he has stated that the Scooter was insured by the National Insurance Company and the court below in paragraph 4 of the impugned judgment has recorded that there is no dispute with respect to the insurance of the vehicles by respective Insurance Company but in paragraph 8 at page 13 of the impugned judgment the court below in contradiction recorded that opposite party no.5 has disputed the coverage of the Scooter under the Insurance coverage policy by the National insurance Company and in that view of the matter the court has found that owner will be liable to pay 30%

compensation. He further submits that in the pleading it has been stated that Scooter was insured by the National Insurance Company and so much so he has also filed the document to show that the vehicle in question was insured but it could not be marked exhibited due to inadvertence. So much so the court below has recorded that there is no dispute that both the vehicles were insured.

6. Learned counsel for the Insurance Company submits that if he had failed to get the document marked about the insurance of the Scooter the order passed by the court below cannot be faulted.

7. Having considered the rival contentions of the parties it appears that in paragraph 13 of the written statement it has been stated, the Scooter being covered under the insurance policy, so much so in paragraph 4 of the impugned judgment the court below has recorded a finding that there is no dispute that both the vehicles were insured.

8. In such view of the matter, the matter is remanded back to the court below only with respect to the portion by way of which 30% amount was directed to be paid by the owner, that order is set aside and the matter is remanded back with a liberty to the appellant that if he has already filed documents showing the

insurance coverage liberty is given to get the document brought on record in that circumstance the Insurance Company will have a right to dispute the claim of the owner of the vehicle.

9. Learned counsel for the Insurance Company has also stated that as the victim was brother of the owner of the vehicle, he will not be treated to third party and will not be entitled for compensation of 30% of the amount which will be considered by the court below.

10. With the aforesaid observation this appeal is allowed to the aforesaid extent.

11. The statutory amount deposited in this Court will be remitted to the court below and the court below is directed to pay the aforesaid amount subject to the result of the case.

(Shivaji Pandey, J)

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