IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.823 of 2009
IN
Civil Writ Jurisdiction Case No. 12405 of 2006

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SANJAY KUMAR DATTA S/o Late Bhupendra Chandra Datta, R/o Mohalla-Surkhikal (Khanjarpur), P.S.-Kotwali (Barari), District-Bhagalpur.

....**Petitioner/Appellant.**

VERSUS

1. The Oriental Insurance Company Ltd. through its Chairman Cum Managing Director, "Oriental House", Post Bag No.-7037, A-25/27, Asaf Ali Road, New Delhi-20
2. The Regional Manager, The Oriental Insurance Company Ltd. Regional Office, Patna, at- Rejendra Road, Pirmuhani, P.S. Kadamkuan, District-Patna-3.
3. The Divisional Manager, The Oriental Insurance Company Ltd., Divisional Office, Bhagalpur, at-"Megh Malhar" building, R.B.S.S.S. Road, P.O.-Head Post Office, P.S.-Kotwali, District-Bhagalpur-1.
4. Sweeti Datta, W/o Late Rajeev Ranjan Datta, C/o Suvidha Tent House, R/o-Mohalla-Surkhikal (Khanjarpur), P.S.-Kotwali (Barari), District-Bhagalpur.

....**Respondents/Respondents**

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Appearance :

For the Appellant	:	Mr. Purushottam Kumar Das, Advocate.
For the Insurance Company	:	Mr. Ashok Priyadarshi, Advocate.
For Respondent No. 4	:	Mr. Neeraj Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 18-05-2015

This Letters Patent Appeal has been

filed assailing Order No. 6 dated 15.04.2009 passed by the learned Single Judge of this Court in C.W.J.C. No. 12405 of 2006, whereunder the said writ petition asking the Writ Court to enforce Janta Insurance Police No. JPA/753/97, issued by Oriental Insurance Company Limited, Respondent No. 1 was dismissed holding that the Oriental Insurance Company Limited had cancelled the policy in 2001, as such, there was no occasion for the Company to indemnify the Insured. In this connection, nominee of the Insured Rajiv Ranjan Datta applied under letter dated 11.07.2005 for payment of the assured amount but his request for such payment was refused under letter dated 15.07.2005, Annexure-2 enclosing copy of the press publication dated 10.07.2005, Annexure-2/A, whereunder Regional Manager of the Company published notice asking the policy holder to collect the deposited premium amount in terms of Clause 5 of the conditions of the Insurance Policy. For ready reference Clause (5) of the Insurance Policy dated 31.12.1996, Annexure-1 is quoted herebelow :-

> *"5. The Company may at any time be notice in writing cancel this policy,*

> *provided that the Company shall in that case return to the Insured the then last paid premium less a pro-rata part thereof for the portion of the current Insurance period which shall have expired. Such notice shall be deemed sufficiently given if posted addressed to the Insured at the address last registered in the Company's books and shall be deemed to have been received by the Insured at the time when the same would be delivered in the ordinary course of post"*

2. From perusal of the quoted condition 5 of the policy document it is quite evident that Insurance Company did reserve the right to cancel the policy but having cancelled the policy Insurance Company was required to have issued notice under registered cover to the Insured asking the Insured to take back the last paid premium less a pro rata part thereof. In the instant case Clause (5) of the conditions of policy dated 31.12.1996 has not been complied with by the Insurance Company as from their communication dated 15.07.2005 itself it is evident that it had issued only a general notice in the press asking the Insured to collect the premium

amount less pro rata part thereof.

3. Insurance Company having cancelled the contract of Insured without complying with the aforesaid clause of the Insurance Policy, in our opinion, is bound by the terms of the contract even after cancellation thereof as in terms of the contract the Company has chosen not to issue notice to the Insured under registered cover for collecting back the premium amount.

4. Learned counsel for the Insurance Company admitted before us that he having taken instruction in the light of the interim order passed by the Writ Court is aware that in the Regional Office or in the Divisional Office of the Company there is no record to suggest that any registered notice in terms of Clause (5) was ever served on the Insured Rajiv Ranjan Datta until his death in the year 2005. In these circumstances, we have no option but to set aside the order passed by the learned Single Judge, direct the Oriental Insurance Company Ltd., its officials, Respondent Nos. 2, 3 to honour the terms of the Insurance Policy dated 31.12.1996, pay the ensured amount to the wife of the Insured by

drawing an Account Payee cheque in her name Respondent No. 4 and then to hand over the cheque to the nominee petitioner who shall in turn hand over the cheque to the wife so that the amount may be credited in her bank account. Necessary compliance of this order be made by Respondent Nos. 1, 2 and 3 within a period of two months from the date of receipt/production of a copy of this order before them.

5. The appeal stands allowed.

(V.N. Sinha, J)

(Nilu Agrawal, J)

P.K.P.

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