

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.332 of 2005

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The Divisional Manager, The United India Insurance Co. Ltd., at Suraksha Bhawan Akharaghat Road Muzaffarpur, represented through Sri S. Tahir Dy. Manager United India Insurance Company Ltd. 3rd Floor Chanakya Complex R. Block, Patna.

.... Appellant

Versus

1. Mohammad Nabi Hassan, son of late Mohammad Halim @ Sk. Ali
.....Claimant No.1
2. Mohammad Jahangir(minor), son of Mohammad Nabi Hassan
.....(minor) Claimant No.2
3. Najnin (minor), daughter of Mohammad Nabi Hassan
.....Claimant No.3
4. Mohammad Chand (Minor), son of Mohammad Nabi Hassan
.....Claimant No.4
5. Ladali (minor) daughter of Mohammad Nabi Hassain
.....Claimant No.5
6. Smt. Rani Devi (owner of Tanker bearing no. WB-A/4165) 44 Balram Bose, Calcutta

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 15-01-2015

Re. Interlocutory Application No.2286 of 2005.

For the reasons mentioned in the application, the delay in filing of this Appeal is condoned.

Accordingly, interlocutory application is allowed.

Re. M. A. No. 332 of 2005.

Heard Mr. Ashok Priyadarshi, learned counsel for the appellant.

2. This is an Appeal preferred against order dated

4th January 2005 passed by 7th Additional Motor Vehicle Accident Claims Tribunal, Muzaffarpur (hereinafter referred as to the "Tribunal") in Claim Case No.55/99.

3. It is simply pointed out by learned counsel for the appellant that the offending vehicle was not under coverage of insurance since the cheque issued for the premium against the vehicle was dishonored and immediately, thereafter, through registered letter owner of the vehicle was intimated but since no heed was paid by him and accident took place much after the steps taken by the owner, the insurer appellant is not at all liable to pay the compensation as awarded by the Tribunal against death of Zarina Khatoon, which had taken place on 24.03.1999.

4. From perusal of the Lower Court Records, it appears that owner of the offender vehicle never appeared before the Tribunal in spite of service of notice and at very initial stage the insurer appellant had simply filed an application enclosing Xerox copy of dishonored cheque issued by the owner against the required premium along with letter of bank indicating reason for such dishonor of cheque.

5. It is further relevant to mention here that at the time of awarding of interim compensation under Section 140 of the M. V. Act, the Tribunal noticing everything and passed a



reasoned order on 17th January 2002 and directed the insurer to make payment giving rise to M.A. No. 88 of 2003 preferred by the present appellant but before any order be passed therein the claim application was finally disposed of giving rise to present appeal making M. A. No. 88 of 2003 infructuous and, consequently, dismissed vide order dated 3rd May 2007 by a Bench of this Court.

6. The insurer appellant though also filed written statement but for the reasons best known chosen not to lead any evidence even formally bring on record the trump cards supporting the assertions made and placed, if any, taken by the insurer intimating the owner regarding the cheque being dishonoured and his liability to pay the premium to get his vehicle under coverage of insurance.

7. Such inaction on the part of appellant disentitles him for any relief in the present Appeal. Consequently, it is hereby dismissed and the appellant is directed to satisfy the award dated 4th January 2005 passed by 7th Additional Motor Vehicle Accident Claims Tribunal, Muzaffarpur with interest till date within a period of one month from today.

8. However, as prayed for the appellant on

verification of materials available with it, if satisfied and so wishes may initiate due proceedings under law for recovery of the amount so paid from the owner, who shall have every right to challenge/contest the claim so put forward but at its own risk,.

(Akhilesh Chandra, J)

Ashwini/-

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