

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.440 of 2013

=====

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

.... Appellant.

Versus

1. Jtwahan Bhuiyan, Son of Late Sital Buiyan (Claimant No.1)
 2. Bigni Devi, daughter of Late Kashi Buiyan (Claimant No.2)
 3. Bigan Bhuiya, Son of Late Kashi Buiyan (Minor) (Claimant No.3)
 4. Ganesh Bhuiya, Son of Late Kashi Buiyan (Minor) (Claimant No.4)
 5. Dinesh Bhuiyan, Son of Late Kashi Buiyan (Minor)(Claimant No.5)
 6. Suresh Bhuiyan, Son of Late Kashi Buiyan (Minor)(Claimant No.6)
- All residents of village Padariya, P.O. and P.S.- Madanpur, District-
Aurangabad, at present Bodhisthan, P.S.- Amas, District-Gaya (Opposite Party
No.2).

.... Respondents.

=====

Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 08-04-2015

Heard learned counsel for the appellant, National
Insurance Company Ltd. and leaned counsel for the respondents.

2. This miscellaneous appeal has been filed, under
Section 173 of the Motor Vehicle Act, 1988, by the opposite party
no.1/appellant, National Insurance Company Ltd., against the order
dated 06.05.2013 passed in M.V. Claim No. 169 of 2010 whereunder
the Adhoc Additional Sessions Judge-II-cum-Motor Vehicle Accident
Claim Tribunal, Gaya (hereinafter referred to as the Tribunal) allowed
the application of the claimants/respondents, filed under Section 140



of the Motor Vehicles Act, 1988, directing the opposite party no. 1/appellant, National Insurance Company Ltd. to pay ad-interim compensation of Rs.50,000/- to the applicants/claimants/respondents within a month of receipts of copy of this order, failing which the claimants/respondents will be at liberty to realize the compensation amount with due process of the court.

3. Learned counsel for the appellant, National Insurance Company Ltd., submits that it would appear from the impugned order that it is a case of contributory negligence on the part of the driver of both vehicles, i.e., tempo bearing registration no. BR-26B-0140 and the truck but the learned Tribunal has directed only the appellant, National Insurance Company Ltd., insurer of the tempo bearing registration no. BR-26B-0140, to pay compensation Rs.50,000/- under Section 140 of the M.V. Act to the claimants/respondents.

4. On perusal of the impugned order, it appears that the learned tribunal has allowed the application of the claimants/respondents arriving at conclusion that the claimants have made party to the driver and owner of tempo bearing registration no. BR-26B-0140 as whereabouts of truck in question could not be ascertained in investigation by the police. As such, the claimants can claim the compensation to any of the vehicle. The tempo bearing

registration no. BR-26B-0140 was inserted with the opposite party no. 1, National Insurance Company Limited.

5. As such, I find no infirmity in the impugned order dated 06.05.2013 passed in M.V. Claim No. 169 of 2010. Accordingly, this miscellaneous appeal is dismissed. However, the appellant, National Insurance Company Ltd., would be at liberty to raise his defence about contributory negligence before the tribunal at the appropriate stage. Let the statutory amount deposited by the appellant be sent to Tribunal for needful.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

U			
---	--	--	--