

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.451 of 2012

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The Branch Manger, United India Insurance Company Ltd. G.T. Road, Sasaram, Near Kali Mandir, P.O./P.S. – Sasaram, District – Rohtas (Sasaram), Appeal and Appellant through the Manager & Constituted Attorney, Regional Office, United India Insurance Company Limited, Chanakya Commercial Complex, R-Block, Patna.

.... Appellant

Versus

1. Aisa Bibi, wife of late Kamaluddin Ansari
2. Md. Jafir Kusain, son of late Kamaluddin Ansari
3. Md. Rafik Ansari, son of late Kamaluddin Ansari

All the above are resident of village – Akrohi, P.S. – Mohania, District – Kaimur.

-----Claimants/Respondents.

4. Maheshwar Singh, son of Late Banshidhar Singh, resident of village, P.O. – Awrihiya, P.S. – Durgawati, District – Kaimur (Bhabhua) (Driver of the Vehicle)

-----O.P. 1/Respondent.

5. Kameshwar Saj, son of late Sita Ram Sah, resident of village/P.O. – Kat Hej, P.S. – Mohania, District – Kaimur (Bhabhua) (Owner of the vehicle).

-----O.P. 2/Respondent.

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Appearance :

For the Appellant : Mr. Durgesh Kumar Singh, Advocate
For the Respondent : Dr. Kislay, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA
ORAL JUDGMENT
Date: 30-01-2015

Heard learned counsel for the appellant and learned counsel for the respondent no. 1 to 3. None appeared on behalf of respondent no. 4 and 5 in spite of valid service of notice at admission stage and Interlocutory Application.

2. The delay in filing the appeal is condoned.

3. This appeal has been preferred against Judgment and Award dated 02.02.2012 and 05.04.2012 passed by Sri Satish Chandra Rai, Additional Sessions judge – F.T.C. – II, Bhabhua, Kaimur, in connection with Claim Case No. 03 of 2010/10 of 2010.

4. The only ground taken in this appeal is that the driving license of the driver of offending vehicle was fake, as is evident from Annexure – A, the report issued by District Transport Officer, Hazaribagh, from where said license claimed to have been issued.

5. It is evident that the certificate, said to have been issued by District Transport Officer, Hazaribagh, has not properly been produced before Claim Tribunal by the appellant insurer. Without any explanation for non-production of the original, only xerox copy of the same was produced as also appears from para – 7 of the judgment, whereas, the original ought to have been produced. When learned counsel for the appellant was confronted, he had left with no other option, but to concede that in the event the appeal is permitted to initiate proceeding for recovery of the amount, so awarded, in favour of the claimant respondent after payment within a month from the owner, non-appearing respondent, in the event, on scrutiny of relevant papers, it is satisfied to substantiate the claim, keeping the right of



owner to contest the claim by placing relevant materials. The submission appears having circumstance, hence, accepted.

6. With the above right on the condition, as stated, this appeal stands disposed of. The appellant is directed to satisfy the award strictly within a month from the date of communication of this judgment.

7. The statutory amount deposited be remitted to the claim tribunal below for needful.

(Akhilesh Chandra, J.)

Rajeev/-

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