IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.788 of 2010

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Ajay Kumar Gupta, son of Sri Mundrika Sah, resident of Mohalla Raj Colony, P.S. Sasaram, District Rohtas

.... Appellant/s

Versus

1. Most. Indu Kuer, wife of late Jag Narayan Sah
2. Bishnujee (minor), son of late Jag Narayan Sah,
3. Neha Kumari (minor), daughter of late Jag Narayan Sah, both 2 and 3 are under guardianship of their mother and natural guardian namely Most. Indu Kuer who has no adverse interest against them, all 1 to 3 are residents of Village Ratanpura, P.S. Kargahar, District Rohtas……. Claimants
4. The New India Insurance Company Limited Branch Sasaram …. Insurer
5. Bachno Devi, wife of Sharda Sah, resident of Village Ratanpura, P.S. Kargahar, District Rohtas

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. BAJARANGI LAL

For the Respondent/s : Mr. Shailendra Kumar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 26-11-2015

Heard learned counsel for the appellant and counsel for the respondent no.4 / New India Insurance Company Limited.

The appellant is the owner of Hero Honda Motorcycle bearing registration no. BR-24B-7592, which was insured by New India Insurance Company Limited at Sasaram Branch. The accident took place at NH 30 as the motorcycle dashed in a new Tata 407 bus as a result of which the husband of the claimant Jag Narayan Sah, who was sitting on the motorcycle driven by opposite party no.1 Ajay Kumar Gupta died in course of treatment. A claim case was filed vide Claim Case No. 58 of 2003. The court has arrived to a finding to be entitlement of Rs. 2,13,000/- after adjusting amount Rs. 25,000/- along with 6% interest from the date of filing of the application.

The Court below has arrived to a finding that the owner of the motorcycle did not produce the driving licence, on that ground the Insurance Company was given liberty to recover the said amount from the owner of the said vehicle. At the same time, the amount awarded in favour of the claimant has also been paid by the Insurance Company. Now, a limited question has been raised about right of recovery by the Insurance Company, which has been given liberty by the Court below.

Learned counsel for the appellant submits that as his licence was lying with police with respect to criminal case, could not produce the same, on that account, the court below has given liberty to Insurance Company the right of the recovery from the appellant. He has further been submitted that he had produced the photocopy of the driving licence on that basis the Insurance Company has given the the insurance claim on account of damage caused to the motorcycle, itself suggests the fact that the appellant was holding a valid licence in such view of the matter, the court below should not have given liberty to the Insurance Company to recover the amount from the owner of the vehicle.

Insurance Company has submitted that as the appellant has not produced the proper driving licence before the Tribunal showing that he was on the date of accident, was holding a valid driving licence. If the appellant produces the original driving licence showing that on the date of the accident he was holding a valid licence the Insurance Company will not embark to realize the amount and the court below will also pass necessary order in the matter.

Let this matter is remanded back to the Court below to the limited extent that if the appellant produces the driving licence within a period of one month from the date of the receipt/production of this order. The court below will make a proper inquiry after giving proper opportunity to the Insurance Company and if arrives to a finding that on the date of the accident the appellant was holding a valid licence it goes without saying that the Insurance Company will not have a liberty to realize the said amount from the owner.

With the aforesaid observation and direction this appeal is disposed of.

(Shivaji Pandey, J)

Vinay/-

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