

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6004 of 2013

Ajit Singh Son Of Late Janardan Prasad Singh Resident Of Mohalla - Durgabari,
St. Francis Academy School, P.O. GPO, Gaya, P.S. Civil Lines, District /Town -
Gaya

.... Petitioner/s

Versus

1. The State Of Bihar through Divisional Commissioner, Magadh Division, Gaya
2. The District Magistrate, Gaya
3. Gaya Municipal Corporation, Gaya through Its Town Commissioner, Gaya
4. National Insurance Company Ltd. Through Its Senior Branch Manager, Gaya
Branch Office, 'Santum', 85, G.B. Road, Gaya

.... Respondent/s

Appearance :

For the Petitioner/s :	Mr. Mukesh Pd. Singh
For respondent no.3	Mr. Rabindra Kr. Priyadarshi
For respondent no. 4	Mr. Ashok Priyadarshi
For the State	Mr. Subhash Pd. Singh, G.A. 7
	Mr. I.P. Mandal, AC to G.A.7

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 23-02-2016

The application prays for a writ of mandamus commanding the respondents, jointly and severally to pay the value of the Victa Sumo vehicle bearing Registration Mark and No. BR-2R-0205 which was burnt to ashes by the protesting crowd/mob on 13.07.2012 when the said vehicle was being used by the Gaya Municipal Corporation (for short 'the Corporation').

The counsel for the petitioner submits that during the pendency of this application his claim for reimbursement of

the value of the vehicle by the National Insurance Company (respondent no.4) with which the vehicle was insured has been repudiated and the said order is not under challenge in the writ application.

The vehicle was registered in the name of the petitioner who engaged Sri Jitendra Sinha as the driver of the vehicle who was having valid driving licence at the relevant time. The vehicle in question was hired through a contract for use in connection with removal of unauthorized encroachments on the G.B. Road Gaya. The unauthorized encroachments were to be removed under the orders of the district administration. In course of removal of the encroachment, a protest was made by the mob/crowd assembled there. The enraged mob started pelting stones and set the vehicle on fire. The vehicle was completely burnt. An FIR was lodged against some named and unnamed accuseds for the criminal acts committed on 13.07.2012. The Fire Brigade Officer, who was also involved in the anti-encroachment drive, submitted a report on 28.07.2002 stating that the vehicle was burnt by the protesting/rampaging mob/crowd. The petitioner laid a claim for the loss of his vehicle before the respondent Insurance Company with which the vehicle was insured. As stated, the claim of the petitioner was

repudiated by the Insurance Company. It is stated that the vehicle was taken on hire by the district administration or the respondent-Corporation and was in their control and as such the State-respondents are legally obliged to compensate the loss sustained by the petitioner.

Heard Mr. Mukesh Prasad Singh for the petitioner, Mr. Rabindra Kr. Priyadarshi for the Corporation, Mr. Ashok Priyadarshi for the respondent-Insurance Company as well as Mr. Subhash Pd. Singh, G.A.7 for the State.

Counter affidavits on behalf of respondent nos. 2, 3 & 4, have been filed. No rejoinder on behalf of the petitioner is filed.

In the counter affidavit of respondent no.4, it is stated that the writ application for such a money claim under the insurance policy is not maintainable. The claim of the petitioner has been repudiated. Against such refusal or repudiation to compensate the loss under the insurance policy of the vehicle, the petitioner can approach the consumer court/forum or the Ombudsman of the respondent-Insurance Company. The vehicle was insured as a private vehicle not to be used commercially. It was not liable to be given on rent or hire.

In the counter affidavit of respondent no.3, it has



been stated that the Victa Sumo vehicle was hired and used in connection with the removal of encroachments on road on 13.07.2012. The owner had rented the vehicle to the administration @ 700/- per day. The petitioner has raised a claim in this regard against the respondent-Insurance Company and steps have been taken in this regard by the respondent-Insurance Company. Queries of the respondent-Insurance Company have been replied by the respondent stating that the vehicle was used on hire basis for enforcing anti encroachment drive.

In the counter affidavit of respondent no.2 similar facts have been stated. The respondent has further stated that the vehicle was burnt and damaged by the protesting crowd while being used by the Municipal Corporation in course of maintaining law and order under the order of the Divisional Commissioner. The petitioner has not availed the remedy available to him by raising a claim in this regard before the respondent-Insurance Company and/or the ombudsman of the Insurance Company.

Indisputably, the vehicle was registered as a private vehicle. On hire basis it was made over to either the Corporation or the administration. The possession of the vehicle was given



but the ownership thereof remained with the petitioner. It was insured. A claim was raised before the Insurance Company when the writ petition was filed. The respondent-Insurance Company, as stated by the petitioner, repudiated the claim giving reasons. The said order of the Insurance Company has not been challenged in the writ petition. The Court is not aware of the terms on which the vehicle was hired. Presumption in law is that the vehicle hired is insured against the loss by whatever reason. In an unexpected circumstance, the vehicle got burnt/damaged. Merely because the Corporation or the administration was utilizing the vehicle on payment, can it be said that the respondent-administration or the Corporation is legally bound to compensate the loss. If a government vehicle utilized in an anti encroachment drive had been damaged/burnt, can a claim of such payment of compensation for the loss be legitimately raised against the officer on the duty overseeing the drive. If the answer is in negative, then the claim raised in this writ application should also be answered in negative. The writ court even otherwise is slow in granting such relief of payment of compensation as the same shall require evaluation or appreciation of diverse relevant facts, some of which have been noticed above. Merely on the basis of the fact that the

vehicle was burnt while under physical control of the administration or the Corporation would not be conclusive to resolve the dispute and grant the relief to the petitioner. The Insurance Company is party respondent. On a claim raised in this behalf the same has been rejected/repudiated. Instated of pursuing his remedy thereagainst, the petitioner has prayed for the relief against the State respondents. A money claim of such nature ought to have been raised in the court of competent civil jurisdiction and adduced relevant evidence in support thereof.

Seen thus, this court is not inclined to grant the relief by invocation of its extraordinary and prerogative writ jurisdiction leaving the petitioner to agitate his claim before the appropriate forum/court in accordance with law.

The application stands disposed of.

(Kishore Kumar Mandal, J)

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