

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.927 of 2011

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United India Insurance Co. Ltd. at Ranjan Complex, Patna- Ranchi Road,
P.O., Biharsharif, District- Nalanda, through its Manager, Regional Office,
Chanakya Commercial Complex 3rd Floor, R. Block- Patna... Appellant

Versus

1. Ravi Kumar son of Prakash Thakur @ Jai Prakash Sharma, R/o village-
Khagoal, P.S. & District- Lakhisarai.....Respondent Ist Set.
 2. Pappu Singh @ Sant Kumar Singh son of Maheshwar Prasad Singh, R/o
village- Ghongsha, P.S.- Sikandra, District- Jamui ... Respondent 2nd set
- =====

Appearance :

For the Appellant/s : Mr. Sanjay Kumar
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**

ORAL ORDER

10 22-08-2016

Instant miscellaneous appeal has been filed by United India Insurance Company Limited against the claimant and owner of the offended vehicle being aggrieved and dissatisfied with the judgment dated 29th August, 2011 and award dated 21.12.2012 passed by learned Additional District Judge, (F.T.C. II) –cum- Motor Accident Claims Tribunal, Jamui in Claim Case No. 10 of 2005 whereby and whereunder the appellant United India Insurance Company Ltd. was directed to pay Rs. 3,61,633/- with 9 % simple interest from the date of institution of the claim petition i.e. 19.07.2007 within two months from the date of the order. In spite of service of notices by paper publication the respondents have not appeared.

The main grounds taken by the appellant is that before

the Tribunal owner of the offended vehicle has not appeared and has not filed road permit and driving license etc., resulting, the appellant could not verified the same. Further the ground is that lost of estate of Rs. 2500/- and loss of consortium of Rs. 5,000/- were also allowed which are not permissible in case of disability.

In the instant appeal also neither the claimant nor the owner has appeared.

Under the circumstances and in view of the decision of Hon'ble Apex Court in the matter of **S. Iyyapan Vs. United India Insurance Company Ltd. & Anr.** reported in (2013) 7 SCC page 62, if there is any breach of condition, even then, the Insurance Company is liable to pay the amount so decreed having with option open to proceed against the owner for recovery of the aforesaid amount. However, the amount of loss of estate and consortium i.e. amount of Rs. 2500/- and 5000/- are concerned, that appears not tenable as it is a case of disablement and accordingly, amount of Rs. 2500/- and Rs. 5000/- are hereby deducted.

Accordingly, the impugned judgment and award are hereby modified and the appellant United India Insurance Company Limited is directed to pay Rs. 3,54,133/- with 9 % simple interest from the date of institution of the claim petition i.e.

19.07.2007. On behalf of appellant it is submitted that interim compensation amount of Rs. 25,000/- has already been paid and, as such, now after deducting the said amount of Rs. 25,000/-, the appellant United India Insurance Company Limited is directed to pay the balance amount with interest as stated above within 2 months from today.

However, it is made clear that the appellant has got option open to proceed against the owner for recovery of the aforesaid amount if there is any breach of condition.

Let the statutory amount deposited here by the appellant be returned to the Tribunal i.e. learned Additional District Judge, (F.T.C. II) –cum- Motor Accident Claims Tribunal, Jamui in Claim Case No. 10 of 2005 so that the same be paid to the claimant which shall be deducted from the amount awarded.

In the result, this miscellaneous appeal is hereby disposed of with the aforesaid modification and observation.

(Jitendra Mohan Sharma, J)

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