IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.37 of 2008

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United India Insurance Co. Ltd.
.... Appellant/s
Versus
Sheo Kumar Sharma & Ors
.... Respondent/s
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Appearance :
For the Appellant/s : Mr. Ram Chandra Lal Das
For the Respondent/s : Mr.
Mr. Rajiv Nayan Singh
Mr. Ambika Bhagat
Mr. Kamal Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

15 27-07-2016 Heard learned counsel Mr. Ram Chandra Lal Das for the appellant, learned counsel Mr. Rajiv Nayan Singh for respondent nos.3 and 4 and learned counsel Mr. Ambika Bhagat for respondent no.2.

Perused the order dated 28.08.2007 whereby the learned Motor Vehicle Accident Claim Tribunal, Madhepura has directed the appellant-insurance company to pay Rs.50,000/- on "no fault basis" under Section 140 of the Motor Vehicle Act. The grievance of the appellant is that only cover note was issued, which was always subject to payment of premium against policy. After issuance of cover note cheque was issued by the financer but it was dishonoured, as such the premium of the insurance was never paid. According to the learned counsel for the appellant, on the date of accident since there was no insurance policy issued by the appellant, the court below could not have proceeded to decide the application under Section 140 of the Motor Vehicle Act stating that the vehicle was admittedly insured with the appellant. The learned counsel further submitted that after application under Section 140 of the Motor Vehicle Act no separate application under Section 166 or 163 of the Motor Vehicle Act was ever filed by the claimants. The driver, the claimant and the owner all are of the same village.

On the other hand, the learned counsel appearing on behalf of respondent nos.3 and 4 submitted that the agency from where the vehicle was purchased has undertaken that the vehicle will be insured and the cheque was issued by the agency which was dishonoured but the same was never communicated to the owner of the vehicle, as such no step could be taken by him. In such circumstances the owner is not liable to pay interim compensation under Section 140 of the Motor Vehicle Act.

The learned counsel for the claimants submitted that because of fighting between the owner and the insurance company the poor claimants are suffering.

From perusal of the impugned order against which the appeal has been filed, it appears that the court below passed the order specifically mentioning that admittedly the vehicle in question causing death of the deceased child was insured with opposite party no.3 i.e. the appellant herein.

In view of the above position and submissions of learned counsels for the parties now the dispute is whether there was valid insurance policy issued by the insurance company is to be considered on the basis of the materials available on record. This aspect of the matter has not been considered.

In the result, this miscellaneous appeal is allowed. The impugned order is set aside and the matter is remanded back to the Motor Vehicle Accident Claim Tribunal, Madhepura for passing a fresh order according to law after hearing the parties.

Since the appeal has been allowed and the order has been set aside, the amount which was deposited for filing this appeal under Section 173 of the Motor Vehicle Act be returned to the appellant.

(Mungeshwar Sahoo, J)

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