IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.262 of 2013

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1. The Manager National Insurance Company Ltd., Katihar Through Sri Anjani Kumar A.O Cum And Duly Constituted Attorney National Insurance Company Ltd., Regional Office 4th Floor Sone Bhawan, B.C. Patel Road, P.O- G.P.O, P.S- Sachiwalaya Patna District- Patna.
2. The Manager National Insurance Company Ltd New Delhi Through Sri Anjani Kumar A.O Cum And Duly Constituted Attorney National Insurance Company Ltd., Regional Office 4th Floor Sone Bhawan, B.C. Patel Road, P.O- G.P.O, P.S- Sachiwalaya Patna District- Patna.

.... Appellant/s

Versus

1. Fulmati Devi W/O Late Jamidar Mahto Resident Of Village Chunni Kala, P.S- K.Nagar, District- Purnea.
2. Kailash Mahto S/O Late Jamidar Mahto Resident Of Village Chunni Kala, P.S- K.Nagar, District- Purnea.
3. Meena Devi D/O Late Jamidar Mahto And W/O Shambhu Mahto Resident Of Village- Baraina, P.S- Sarsi, District- Purnea.
4. Meera Devi D/O Late Jamidar Mahto And W/O Jhakasu Mahto Resident Of Village Sanjha Ghat, P.S- Dhamdaha, District- Purnea
5. Domani Devi W/O Late Jamidar Mahto And W/O Kailash Mahto Resident Of Village- Begumpur, P.S- K.Nagar, District- Purnea
6. Maulana Matiur Rahman S/O Maulana Imtiyaz Ali Resident Of Village- Shobhaganj, P.S- K.Ghat, (Maranga O.P District- Patna)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarsi, Advocate

For the Respondent/s : Mr. Amit Kr. Anand, Advocate
Mr. Kumar Manglam, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 20-07-2017

Delay of 12 days in filing the appeal is condoned. I.A. No.6489 of 2015 is allowed.

This is an appeal filed by the Insurance Company in the matter of challenge made to a judgment and award passed by the Addl. District Judge, Purnea in M.V. Claim Case No.79 of 2008.

The legal issue raised by the Insurance Company in the aforesaid case is that in spite of various objections raised by the Insurance Company with regard to their liability, the Tribunal proceeded to decide the questions without framing of issues and without considering the objections raised by the Insurance Company.

One of the primary objections raised by the Insurance Company, as is evident from the written statement filed by the Insurance Company is that the accident took place on 13.5.2008 and the policy in question was only valid from the period 6.2.2007 up to 5.2.2008 and on these grounds, it is stated that without framing of issues and enquiring into the issues in the manner as done, the award is unsustainable. In support of his contention, he invites my attention to the principles laid down by the Hon'ble Supreme Court in the case of Bimlesh and Ors. vs. New India Assurance Co. Ltd., AIR 2010 SC 2591 with regard to procedure to be followed by the Tribunal in such cases and two judgments of the Patna High Court in the cases of Rita Devi vs. New India Assurance Co. Ltd, 2004 0 ACJ 801, and The Oriental Insurance Company Ltd. Vs. Dr. Awadhesh Kumar Sharma & Anr., wherein it has been specifically held that when contentious issues are raised before the Tribunal, the Tribunal under law is duty bound to frame issues and decide an award by framing the issues and deciding each issue on the basis of the material available on record.

In the backdrop of the judgments, particularly the judgment of the Patna High Court in the Case of Awadhesh Kumar Sharma (supra), I am of the considered view that in deciding the claim in question without framing of issues, a material illegality and irregularity has been committed by the Tribunal which has caused prejudice primarily to the Insurance Company and, therefore, it is a fit case where the award should be set aside and the matter remanded back to the Tribunal. However, considering the fact that the claimants are the dependents of the deceased and they are contesting the matter since 2008, interest of justice would be met in case the Insurance Company is directed to deposit 50% of the amount as awarded by the Tribunal after deducting Rs.50,000/- paid to the claimants subject to the final outcome of the case.

Accordingly, the award in question is quashed with the following directions:

On the Insurance Company depositing 50% of the amount as awarded by the Tribunal by the impugned award, after deducting Rs.50,000/- already paid and this Court remitting the statutory amount of Rs.25,000/- deposited by the Insurance Company to the trial court to be paid to the claimant, the Tribunal shall proceed to decide the claim petition in accordance with law after hearing all concerned, preferably within a period of three months.

With the aforesaid, the appeal is allowed and disposed of.

Office to remit the documents to the trial court forthwith along the statutory amount of Rs.25,000/- deposited by the Insurance Company.

(Rajendra Menon, CJ)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29.7.2017
Transmission Date	N/A