IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.550 of 2011

==

United India Insurance Company Limited, through its Divisional Manager, Murarpur Road, P.S.-Kotwali, District-Gaya. Appeal and Appellant though the Manager and Constituted Attorney, Regional Office, United India Insurance Company Ltd. 3rd floor Chanakya Commercial complex, R'Block, Patna.

.... Appellant/s

Versus

1. Anwari Khatoon W/o Lt. Ishrail Ansari.
2. Md. Asgar Ali S/o Lt. Ishrail Ansari.
3. Md. Aslam Ali S/o Lt. Ishrail Ansari.
4. Md. Arshad Ali S/o Lt. Ishrail Ansari.

All the above are R/o Village-Bahidganj (Sihuli), P.S. Amas, District-Gaya.

5. Sri Shadab S/o Sri Sahjad, R/o Mohalla-Ansarganj (Desidarwaja), PO/PS-Sikandrabad, District-Buland Sahar, (UP) {Owner of the Truck-UP-13G-13476}

.... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Durgesh Kumar Singh
For the Respondent nos. 1 to 4	:	Mr. Subhash Patel,

==

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 13-10-2017

Heard learned counsel for the appellant and learned counsel for the respondent nos. 1 to 4 on this Miscellaneous Appeal and perused the records.

No one turned up on behalf of the respondent no. 5, despite service of notice.

3. This Miscellaneous Appeal has been filed against the Order dated 29.04.2011 passed by F.T.C. IInd-cum-Motor Vehicle Accident Claim Tribunal, Gaya in M.A.C. Case no. 26 of 2010, whereby the learned Tribunal allowing the petition under Section

140 of the M.V. Act and directed the opposite party no. 1 (United India Insurance Company Ltd.) to pay the *ad interim* compensation to the tune of Rs. 50,000/- to the claimants within three months from the order.

4. Factual matrix of the case is that the claimants filed M.A.C. Claim Case no. 26 of 2010 under Section 166 of the M.V. Act on account of death of the deceased Md. Ishrail Ansari in the motor vehicle accident with the case in succinct that on the fateful day the deceased Md. Ishrail Ansari was coming on his bicycle by left side of the road, suddenly a truck bearing registration no. UP13G-3476 being driven rashly and negligently in high speed by its driver arrived near him and dashed him. He sustained injuries in the said accident and ultimately died on the spot. Regarding the said accident, Amas P.S. Case no. 73 of 2003 was instituted under Sections 279, 304A of the Indian Penal Code. During the pendency of the aforesaid case, the claimants filed a petition under Section 140 of the M.V. Act for awarding *ad interim* compensation to the tune of Rs. 50,000/-.

5. The opposite party no. 1 (United India Insurance Company Ltd.) filed rejoinder against the said petition and after hearing the parties and perusing the record, learned lower court passed the impugned order.

6. Being aggrieved and dissatisfied with the aforesaid order, the United India Insurance Company Ltd. has preferred the present appeal.

7. It is submitted by the learned counsel for the appellant that the offending vehicle was not registered by the appellant and the cover note of the insurance policy filed by the claimants regarding the insurance of the said vehicle is fake. Hence, the appellant is not liable to pay any compensation to the claimants. The appellant has filed a petition dated 25.02.2011 in the court below to expunge it from the case on the aforesaid ground and the said petition is on record. But without considering the aforesaid petition and vital issue raised by the appellant, the learned Tribunal has passed the impugned order which is liable to be set aside.

8. On the other hand, it is submitted by the learned counsel for the respondents that the learned Tribunal has passed the impugned order considering the facts material available on record. Hence, it is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

9. From perusal of certified copy of the petition dated 25.02.2011 filed by the appellant, it appears that by filing the said application before the Tribunal, appellant has raised the aforesaid plea of fake policy earlier to passing of the impugned order after furnishing a copy of the same to the learned counsel for the claimants, but while passing the impugned order, the learned Tribunal has not considered and discussed the aforesaid vital controversy raised by the appellant. It is settled principle of law that when objections are raised by Insurance Company in regard to its liability towards payment of compensation to the claimants, the Tribunal is required to render a decision upon the said issue even in the matter of no fault liability.

10. Considering the aforesaid facts and circumstances of the case, the impugned order passed by the learned Tribunal is set aside and the case is remitted back to the learned Tribunal for passing fresh order, considering the aforesaid petition of the appellant in accordance with law. Accordingly, this appeal is allowed.

11. Let the statutory amount deposited by the appellant be returned to it through cheque.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.10.2017
Transmission Date	N.A.