

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.185 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 1181 of 2014**

=====

Oriental Insurance Co. Ltd. Divisional Office, Muzaffarpur (Opposite Party No. 2 in Claim Case No. 173 of 2010 before Additional District Judge (II)-Cum- Motor Accident Claims Tribunal, Muzaffarpur) through its Regional Office At Pirmuhani, Kadam Kuan, Patna- 3

.... Appellant/s

Versus

1. The State Of Bihar through the Secretary-Cum-Legal Remembrancer, Department Of Law, Government Of Bihar, Patna
2. Ramdeo Bhagat Son of Late Saudagar Bhagat, (husband of deceased Rajkumari Devi and Claimant No. 1 in Claim Case No. 173 of 2010 before Additional District Judge (II)-Cum-Motor Accident Claims Tribunal, Muzaffarpur)
3. Mithilesh Bhagat, Son Of Ramdeo Bhagat (Son Of Deceased Rajkumari Devi and Claimant No. 2 in Claim Case No. 173 of 2010 before Additional District Judge (II)-Cum- Motor Accident Claims Tribunal, Muzaffarpur), both respondent no.2 and 3 resident Of Village & P.O. Gidha, Ps Saraiya, District- Muzaffarpur
4. Sanjay Kumar @ Sanjay Kumar Thakur Son of Sri Rajeshwar Thakur (Owner and Driver of Mahendra Marshal Jeep No. BR-01P-0901 and Opposite Party No. 1 in Claim Case No. 173 of 2010 before Additional District Judge (II)-Cum- Motor Accident Claims Tribunal, Muzaffarpur), Resident Of Village- Madhubani, P.S. Mushahari, District- Muzaffarpur

.... Respondent/s

=====

Appearance :

For the Appellant : Mr. Arun Kumar Shrivastava, Advocate
For the State : Mr. Sunil Kumar, AC to GP-11

=====

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH**

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 15-02-2017



The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 7th of December, 2015 in C.W.J.C. No. 1181 of 2014 whereby, the writ application directed against an order granting compensation under the no fault liability in terms of Section 140 of the Motor Vehicles Act remained unsuccessful.

2. The order dated 16th of August, 2013 is to the effect that the Oriental Insurance Company, the present appellant, has filed written statement and denied the accident on account of the vehicle rash and negligent act of the driver. However, the appellant confirmed the policy of the insurance.

3. Since the insurance policy is admitted, the initial liability to pay compensation is of the Insurance Company. In *National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297*, it has been held that even if the Insurance Company is not liable in terms of the policy, it has the right to recover from the owner or the driver, but the claimants cannot be deprived the benefit of the compensation. The Court held as under:-

“83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the



third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading”.

4. In view thereof, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal. The same is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.03.2017
Transmission Date	

