IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.494 of 2008

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1. Ganesh Prasad son of Late Shambhu Prasad
2. Usha Devi wife of Ganesh Prasad
   Both resident of Mohalla-Shivpuri, Ambedkarchowk (Chitkohra) P.S.-Gardanibagh, District-Patna

.... Appellant/s

Versus

1. National Insurance Company through its Branch Manager, Hajipur Branch, Yadav Chowk Hajipur, P.S. Hajipur Town, District-Vaishali
2. Sanjay Kumar Singh (owner of the Truck) son of Late Ramashraya Prasad Yadav, resident of village-Macthiya Jirat, Lohar Patti, Main Road, Motihari, P.O. & P.S.-Motihari, District-East Champaran
3. Ram Babu Paswan (Driver of the Truck) son of Bhuneshwar Paswan, R/o village-Pokhraira, P.S. Karja, District-Muzaffarpur

.... Respondent/s

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Appearance:
For the Appellant/s : Mr. Mukesh Kumar Jha
For the National Insurance Company : Mrs. Seema

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL ORDER

13 08-08-2017 Heard learned counsel for the appellants and learned counsel for the respondent no. 1.

Perused the record.

This miscellaneous appeal has been filed against the order dated 24.5.2008 passed by the District Judge-cum-Motor Accident Claim Tribunal, Vaishali, Hajipur in Claim Case No. 45 /07 whereby rejecting the petition under Section 140 of the M.V. Act filed by the claimants.

The claimants have filed aforesaid petition under Section 140 M.V. Act for awarding interim compensation on account of death of son of the claimants in the motor vehicle accident against the owner, driver of offending vehicle and its insurance company.

After hearing the parties and perusing the record, the learned tribunal rejected the aforesaid petition of the claimants on the ground that the insurance certificate filed by the claimants is forged and fabricated. Hence the insurance company is not liable to pay compensation.

It is submitted by learned counsel for the appellants that as the aforesaid petition has been filed against the owner and driver of the offending vehicle besides its insurance company and if in case of policy certificate issued by the insurance company is found forged, the claim petition ought not to have been rejected outrightly rather allowed against the owner of the offending vehicle.

Learned counsel for the respondent no. 1 submitted that as the insurance certificate filed by the claimants is forged one and the offending vehicle has not been insured by the National Insurance Company Limited, hence the insurance company is not liable to pay any compensation to the claimants.

From perusal of the impugned order, it appears that admittedly the insurance certificate filed by the claimants was forged one. In the said aspect of the case, the insurance company would not be liable to pay any compensation to the claimants indemnifying the owner of the vehicle. The primary obligation to pay compensation to the claimants lies on the shoulder of the owner of the vehicle and insurance company is only liable to indemnify the owner of the vehicle in case the offending vehicle is found insured by it. But as the insurance certificate is forged one meaning thereby the offending vehicle was not insured by the National Insurance Company, the liability of payment of compensation by the insurance company under section 140 of the M.V. Act does not arise and in that case the owner of the vehicle should be liable to pay compensation.

Hence, in view of the aforesaid facts and circumstances, the impugned order dated 24.5.2008 passed by learned Tribunal is set aside and the learned Tribunal is directed to pass fresh order in accordance with law.

Accordingly, this Miscellaneous Appeal is hereby allowed.

(Prakash Chandra Jaiswal, J)

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