

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.773 of 2016  
In  
Civil Writ Jurisdiction Case No. 6004 of 2013**

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Ajjit Singh, Son of Late Janardan Prasad Singh, Resident of Mohalla- Durgabari,  
St. Francis Academy School, P.O- GPO, Gaya, P.S.- Cvil Lines, District / Town-  
Gaya.

.... .... Appellant/s

Versus

1. The State of Bihar through Divisional Commissioner, Magadh Division, Gaya.
2. The District Magistrate, Gaya.
3. Gaya Municipal Corporation, Gaya through its Town Commissioner, Gaya.
4. National Insurance Company Ltd. through its Senior Branch Manager, Gaya  
Branch Office, 'Santum' 85, G.B Road, Gaya.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Mukesh Prasad Singh  
Mr. Y P Sinha

For Respondent nos. 1 and 2: Mr. Ram Subhash Singh, AC to AAG 7

For Respondent no. 3 : Mr. R K Priyadarshi

For Respondent no. 4 : Mr. Ashok Priyadarshi

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

ORAL JUDGMENT

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 11-10-2017**

Seeking exception to an order dated 23.02.2016 passed  
by the learned Writ Court in CWJC No.6004 of 2013 rejecting the  
claim of the petitioner for payment of the value of a vehicle, namely,  
Victa Sumo, bearing Registration No. BR-2R-0205, which was  
burnt to ashes by a protesting group/mob on 13.07.2012, this appeal  
has been filed under Clause 10 of the Letters Patent.

Appellant herein claims to be the owner of the vehicle in  
question. He has filed the relevant documents indicating purchase of



the vehicle from M/s Pareena Motors Pvt. Limited sometime in December, 2011 on payment of Rs.6,99,470/- by way of demand draft. Be that as it may, it is said that after purchase of the vehicle it was registered with the respondent no.4-Insurance Company covering a risk from the period 12.12.2011 to 11.12.2012. According to the petitioner-appellant, vide Annexure-5 dated 13.07.2012, an F.I.R. was lodged by the Executive Engineer of Gaya Municipal Corporation with regard to certain incident that took place while removing of encroachment at G B Road, Gaya when a mob assembled, and the vehicle of the petitioner was put to fire.

It is the case of the appellant that his vehicle was taken on requisition for the purpose of carrying Government Officials for removing the encroachment for maintenance of law and order and the mob protesting against the removal of encroachment put the vehicle on fire. As a consequence thereof, the petitioner has suffered the loss and the writ petition was filed. However, the learned Writ Court has dismissed the writ petition only on account of the fact that the petitioner may claim compensation by approaching the Consumer Forum or the Ombudsman against the respondent-Insurance Company.

It is the case of the appellant that once the vehicle was taken on requisition by the Municipal Corporation and it was used by the District Administration for the purpose of maintenance of law



and order merely because the vehicle is insured the petitioner cannot be relegated to take recourse to the remedy of raising the claim against the Insurance Company when the Insurance Company in its counter affidavit has categorically denied their liability to pay compensation on account of violation of the policy condition.

Having heard learned counsel for the parties at length, the core issue is as to whether for use of the vehicle in question in connection with the removal of encroachment undertaken by the Municipal Corporation any compensation is liable to be paid and, if so, by whom. Facts that are borne out from the records, particularly the F.I.R. lodged by the official, namely, Executive Engineer of Gaya Municipal Corporation at 18 hours on 13.07.2012 goes to show that senior officers of the Govt. Department including the Commissioner of Magadh Division and the District Administration of Gaya, passed an order for removal of the encroachment from G B Road, Gaya, and on instruction of the District Administration it is seen that the authorities of the Municipal Corporation constituted a team for removal of encroachment which consisted of Shri B Prasad, Executive Engineer, Sub Divisional Magistrate, Police Officers and officials of the police force. They used the vehicle of the petitioner for official and Govt. duties. In the FIR it is indicated that about 100-150 persons assembled and protested against the removal of encroachment, and in an agitated mood put to fire the vehicle of the



petitioner.

From the aforesaid averments made in the FIR and also other documents available on record it is clear that the vehicle in question used to carry the govt. officials for executing the encroachment drive and the entire action for encroachment was undertaken on the direction of the officers of the State Government and the Municipal Corporation. The vehicle of the appellant was taken on requisition for the same and once the evidence on record shows that the vehicle was used for the purpose of conducting the encroachment drive and temporarily the custody and possession of the vehicle was given jointly to the Municipal Corporation and the State Government to carry out the operation, if any loss has been caused to the appellant due to this act, the State Government and authorities of the Municipal Corporation are liable to compensate the appellant as the appellant had to suffer the loss because his vehicle was hired by the authorities of the Municipal Corporation or the Government for carrying the officers who were on duty for removal of encroachment.

The learned Writ Court ignored all this valid factual aspect of the matter by holding that the vehicle is insured, therefore, relegated the petitioner to take recourse to the remedy available for challenging the action of the Insurance Company. However, the Insurance Company has filed a counter affidavit and disputes before



us the liability under the policy of insurance on various grounds which includes violation of the policy condition. Once the evidence and the overwhelming material available on record indicated that the vehicle was used for certain official purpose by the Government and statutory authorities of the Municipal Corporation, and if during the course of such use of the vehicle by the authorities loss is caused to the owner of the vehicle compensation to the owner has to be paid by the authorities and thereafter the authorities can resolve their inter se dispute with regard to the liability to pay the amount. In this case, merely because there is inter se dispute between the State Government, the Municipal Corporation and the Insurance Company – as to who is liable to pay the compensation, the right of the petitioner to be compensated for the damages caused to him by act of the State Government or the Municipal Corporation in using his vehicle and being unable to control the crowd and maintain the law and order cannot be the reason for denying him the compensation.

The learned Writ Court having denied the benefit to the petitioner on consideration which were not proper, we allow this appeal, set aside the order passed by the learned Writ Court and direct that on the owner of the vehicle on filing the relevant documents and establishing his claim, at the first instance the State Government through the Department in question shall settle the claim of the appellant, pay him the entire amount due after



assessment of the claim within a period of three months from date of receipt of the certified copy of this order and thereafter liberty shall be available to the State Government to recover the amount from the Municipal Corporation or the Insurance Company, as may be permissible under law.

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

**(Rajendra Menon, CJ)**

**(Anil Kumar Upadhyay, J)**

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