IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.277 of 2010
IN
MA 100 of 2006

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1. Rajeshwari Kuer, wife of Late Tuntun Singh @ Chandradeo Singh.
2. Mohan Singh, son of Late Tuntun Singh @ Chandradeo Singh.
   Both are resident of village Dewaria Tole Dubarbanna, P.S. Dewaria, District Muzaffarpur.

……………… Claimants No.1 & 2/Respondents/Petitioners.

Versus

1. The Divisional Manager, Oriental Insurance Company Limited at Motijheel, Muzaffarpur.

…………… Opposite Party No.2/Appellant/Opposite Party.

2. Smt. Usha Rani, wife Sri Indra Mohan Agrawal, at present Agrawal Street, Zira, Tahsil Zira, District Ferozpur, State Punjab, Pin Code 142047.

…………… Opposite Party No.2/Appellant/Opposite Party.

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Advocate.
For the Respondent/s : Mr. Krishna Kishore Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 16-05-2018

Heard learned counsel for the petitioners and learned counsel for the opposite party no.1. None turned up on behalf of opposite party no.2, despite service of notice.

2. This civil review petition has been filed for review of the order dated 17.07.2009 passed by this Court in M.A. No.100 of 2006, whereby this Court allowing the appeal filed by the Oriental Insurance Company Limited (hereinafter in short referred to as the 'Insurance Company') set aside the judgment and award passed by the learned Tribunal.

3. The factual matrix of the case is that petitioners had filed Claim Case No.19 of 2003 for awarding compensation on account of death of son of petitioner no.1 and brother of petitioner no.2 in the motor vehicle accident. The aforesaid case was contested by the appellant and after hearing the parties and perusing the record, the learned Tribunal vide judgment dated 18.01.2006 and award dated 31.01.2006 allowing the claim petition directed the Insurance Company to pay the amount of compensation to the tune of Rs.1,82,000/- along with interest at the rate of 9% per annum from the date of filing of the claim case to the claimants-petitioners with liberty to recover the awarded amount paid by it from the owner of the vehicle.

4. Being aggrieved and dissatisfied with the impugned judgment and award, the Insurance Company filed M.A. No.100 of 2006 before this Court.

5. As the appellant and respondents even after the service of notice did not turn up before this Court, this Court after perusing the record allowed the appeal by setting aside the judgment and award of the learned Tribunal vide its order dated 17.07.2009.

6. Being aggrieved and dissatisfied with the aforesaid order of this Court, the claimants-petitioners have preferred this review petition.

7. It is submitted by learned counsel for the review petitioners that the vehicle in question is insured under the comprehensive policy scheme by the Insurance Company and the aforesaid fact is also reflected in the impugned judgment of learned Tribunal but this Court has wrongly observed that there is nothing on record that such a third party risk policy was taken by the vehicle owner and this Court finding the deceased as a gratuitous passenger has set aside the judgment and award passed by the learned Tribunal allowing the appeal. As once the Court finds violation of terms and conditions of the policy and the Insurance Company not liable to pay the compensation indemnifying the owner of the vehicle, it must hold the owner of the vehicle liable to pay the aforesaid amount of compensation but there is no such order passed by this Court, instead the entire judgment and award has been set aside, which is an error apparent on the face of record.

8. On the other hand, it is submitted by learned counsel for the opposite party no.1-Insurance Company that offending vehicle (truck) was a goods carriage and the deceased was travelling on the said truck as a labourer and his risk is not covered under the policy issued by it as no premium in this regard has been paid by the insured. Thus, the deceased happens to be gratuitous passenger and there is a violation of terms and condition of the policy at the hand of the owner of the vehicle so the Insurance Company is not liable to pay compensation indemnifying the owner of the vehicle and this Court has rightly held and the opposite party no.1 is not liable for the same. So far as not saddling the liability on the shoulder of the owner of the vehicle by this Court is concerned, it is not an error apparent on the face of record and the order is not amenable to review rather to appeal.

9. From perusal of the impugned judgment of learned Tribunal, it appears that the vehicle in question was insured vide policy bearing no.02597/2001 and the said policy was valid and enforceable from 18.01.2001 to 17.02.2002 i.e. on the date of accident. As the vehicle was insured and the insurance policy was effective at the relevant time of accident. Hence, the risk of third party is covered under the said policy. As found by this Court in M.A. No.100 of 2006 the deceased was a gratuitous passenger and there is a violation of terms and conditions of policy, hence the Insurance Company is not liable to pay any compensation to the claimant indemnifying the owner of the vehicle but this Court has not held that if the Insurance Company is not liable then on whose shoulder the liability of payment of compensation would be saddled. Primary liability of payment of compensation lies on the owner of the vehicle and the Insurance Company is made liable to pay compensation to the claimant only to indemnify the owner of the vehicle in case the vehicle is insured and there is no violation of terms and conditions of policy and if the Insurance Company is not found liable to pay the compensation then the owner will liable to pay the same but this finding is found lacking in the impugned order, which appears to be an error apparent on the face of record.

10. Accordingly, the impugned order passed by this Court is hereby reviewed and the owner of the offending vehicle is directed to pay awarded amount of compensation to the claimants-petitioners modifying the impugned order of this Court and judgment and award of learned Tribunal. This review petition is allowed accordingly.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
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