IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3240 of 2016

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Reena Devi, Wife of late Harendra Bharti, Resident of Village- Khera, Dhawani, PO- Khera, P.S Kasma, District Aurangabad, Presently residing with her Father Sri Jagdish Giri Mohalla- Siyaram Colony, Belaganj, District Gaya.

... ... Petitioner/s

Versus

1. The Oriental Insurance Company Ltd. Having its registered office at Oriental House, A-25/27, Asaf Ali Road, New Delhi, through its Managing Director.
2. The Divisional Manager, the Oriental Insurance Company Ltd, R.J. Place, Rai Kashi Nath More, Gaya.
3. The State of Bihar, through the Principal Secretary, Home Department, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Dr. Mayanand Jha, Adv.
Dr.Nagendra Kumar, Adv.
Mr. Satyendra Prasad, Adv.

For the Insurance Company: Mr. Ashok Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date : 10-04-2019

This matter has been listed today under the heading ‘For Judgment’. At this stage, Mr. Ashok Priyadarshi, learned counsel has appeared on behalf of the Oriental Insurance Company Ltd. and sought permission to make his submissions. In the interest of justice, this Court has heard him.

After hearing learned counsel for the parties, it appears that the petitioner has assailed the decision of the insurance company as contained in letter dated 30.03.2007, enclosed as Annexure- ‘5’ to the writ application, on the ground that the claim of the petitioner for payment of the insurance amount on account of theft/loot of Mahindra Bolero DIZ bearing Reg. No.JH01K-0520 (in the name of the deceased husband of the petitioner) was closed by the insurance company for no fault on the part of the petitioner or her late husband. The submission on behalf of the petitioner is that the insurance company has decided to close the claim of the petitioner without realizing that submission of the police final report was not in the hand of the petitioner or her husband rather it was the duty of the investigating officer of the case to conclude the investigation within a reasonable time and to submit the final report which was done by the investigating officer within a reasonable time.

The FIR being Chandauti (Chakand) P.S. Case No.165/2006 under Section 392 of the Indian Penal Code was lodged by one Virendra Giri who happened to be the brother-in-law (Bahnoi) of the husband of the petitioner alleging that on 16.10.2006 at about 6.00 PM while he was returning after getting treatment from Dr. Sheetal Prasad and the vehicle reached near Bara Gumati, 3-4 persons stopped the vehicle and pointed a revolver at the informant. It is alleged that the informant was asked to come down from the vehicle, thereafter all the miscreants took away the vehicle and cash from the pocket of the informant. The husband of the petitioner thereafter informed the alleged occurrence to the Divisional Manager of the Oriental Insurance Corporation Limited vide Annexure-4 to the writ application.

It appears from a copy of the police final report available at Annexure-6 to the writ application that it took about three years to the investigating officer to conclude that the case is true but there was no clue. A final form report dated 30.09.2009 was submitted in the court below but the investigating officer committed a mistake in writing the vehicle description. It is the case of the petitioner that in the final form report dated 30.09.2009 the description of vehicle was mentioned as Marshal bearing No.JH-IG-9261 instead of Bolero JH-01K-0520. Annexure-6 is the copy of the final report which was accepted by the court below vide order dated 29.11.2012 (Annexure-8 to the writ application). In the meantime, husband of the petitioner died on 22.03.2010.

Further when the mistake in mentioning the description of the vehicle was pointed out to the police authorities, Dy.S.P. Law and Order directed the officer in-charge of Chakand O.P. to inform the learned court below about the mistake stating that the correct number is JHIK-0520 and the name of the vehicle is Bolero. This fact came to the knowledge of the petitioner on receipt of reply under R.T.I. vide memo no.573 dated 26.04.2013 issued by the Sr.S.P., Gaya to the informant of the case. Ultimately, the officer in-charge of Chakand submitted a corrigendum dated 22.11.2013 which was acknowledged vide diary no.959/13 dated 22.11.2013 (Annexure-9 and 9/A to the writ application). The correct final form was submitted only on 22.11.2013. The petitioner thereafter moved the Divisional Manager of the insurance company by filing a fresh petition supported by the required documents including owner book, insurance receipt, final report, Court's order etc. requesting him to make payment of the insured amount. A copy of the letter dated 20.12.2013 submitted by the petitioner is Annexure-10 to the writ application.

It is further stated that despite receipt of desired documents the insurance company slept over the matter and it was only on 30.07.2015 vide Annexure-11 to the writ application the Divisional Manager wrote a letter to the D.T.O., Ranchi to furnish the details of the vehicle, thereupon the D.T.O., Ranchi furnished the details of the vehicle registered in the name of the husband of the petitioner on 05.08.2015 vide Annexure-11/A to the writ application. Despite this, the payment has not been made to the petitioner. It is alleged that the respondent insurance company is sitting over the matter.

In course of argument, Mr. Ashok Priyadarshi, learned counsel for the Oriental Insurance Company Limited has raised submissions based on the principles of delay and laches. It is his submission that the writ application has been filed before this Court challenging the decision of the insurance company as contained in Annexure-5 to the writ application after a period of about 9 years. Learned counsel also raised a submission that in such cases where the petitioner challenges the decision of the insurance company, the other forums such as consumer court are available, therefore Writ Court may not exercise its extraordinary writ jurisdiction to entertain the present writ petition.

Having heard learned counsel for the parties and on perusal of the records, this Court is convinced that there was no fault on the part of the petitioner or her husband in not submitting the copy of the police final report. The sequence of facts which have been taken note of by this Court hereinabove would show that several years were consumed at different levels. It took three years to the investigating officer to submit the final report as per directions of the senior officer which contained wrong description of the vehicle. The said final report containing wrong description of vehicle was accepted by the court below without looking into the detail of the description of the vehicle as appearing in the FIR. Further it took three years to the learned C.J.M. in accepting the police final report dated 30.09.2009. During this period husband of the petitioner died, but somehow she pursued the matter for correction of error in the police final report which was ultimately done and thereafter the petitioner submitted all the documents with her letter dated 20.12.2013. Annexure-11 and 11/A shows the further exercise were undertaken by the insurance company towards consideration of the claim of the petitioner. The letter dated 30.07.2015 (Annexure-11) written by the Divisional Manager says that for purpose of disposal of motor claim the information with regard to registration of the vehicle is required. The said information was immediately supplied by the D.T.O., Ranchi vide Annexure-11/A to the writ application, but thereafter no further action has been taken.

The principle of delay and laches will not come in the way of the petitioner in the facts of the present case. The said principle cannot be applied in a case where the pleadings are clearly showing that the delay has been caused by various authorities and it was not because of any fault on the part of the petitioner in pursuing her remedy. The petitioner being a widow has pursued her case at various level all through. Initially, the claim of the petitioner was closed vide Annexure-7 because the police final report was not submitted but thereafter when all the documents were submitted by the petitioner, steps were taken by the Divisional Manager of the insurance company towards disposal of the claim of the petitioner. Annexure-11 and 11/A are certifying these facts. This writ application has been preferred immediately thereafter when the further steps were not being taken by the authorities of the insurance company to dispose of the claim.

The plea of alternative remedy would also not appeal to this Court for the reason that the said principle is also well settled in law. To oust the petitioner on the ground of there being an alternative remedy is not a rule of law rather is a rule of convenience and discretion.

In the facts of the present case where the authorities of the insurance company which is covered within the meaning of the word 'other authorities' under Article 12 of the Constitution of India is not acting and the complaint is that because of their inaction the claim of the petitioner has not been considered and disposed off, after more than three years of pendency of the writ application before this Court, it would not be just and proper for this Court to relegate the petitioner to seek her remedy before the consumer court or any other forum.

In the given facts and circumstances, this Court thinks it just and proper to set-aside the decision of the respondent

Insurance Company as contained in Annexure-5 to the writ application whereby the claim of the petitioner was closed and directs the Divisional Manager (respondent no.2) to consider the claim of the petitioner and dispose it of within a period of 60 days from the date of receipt/production of a copy of this order. The respondent no.2, while disposing of the claim of the petitioner, in case of admission of claim shall also consider the payability of interest at a reasonable rate in accordance with the guidelines of the Insurance Regulatory Development Authority (IRDA). The claim amounts together with interest thereon, as may be found admissible, will be paid to the petitioner within the aforesaid period.

The writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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Uploading Date	
Transmission Date	