IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.268 of 2012

==

THE BRANCH MANAGER, the Oriental Insurance Company Ltd. Yashoda Bhawan, Main Road, Buxar, Represented Through The Chief Regional Manager, the Oriental Insurance Company Ltd., Regional Office, Kadamkuan, Pirmohani, Patna-3

... ... Appellant/s

Versus

1. MOST. KUMKUM DEVI W/O Late Hanuman Singh R/O Village- Sauth, P.S.- Itarhi, District- Buxar.
2. Anup Singh S/O Late Hanuman Singh R/O Village- Sauth, P.S.- Itarhi, District- Buxar.
3. Shisham Kumari D/O Late Hanuman Singh R/O Village- Sauth, P.S.- Itarhi, District- Buxar.
4. Santosh Kr. Singh S/O Shri Mohan Singh R/O Village- Katariyan, P.O.- Kakariya, P.S.- Rajpur, District-Buxar.
5. Barmeshwar Singh S/O Shankar Dayal Singh R/O Village- Gogahi, P.S.- Dhansoin, District- Buxar.

... ... Respondent/s

==

Appearance :
For the Appellant/s : Mr. Bimlesh Kumar Jha, Adv.
For the Respondent/s : Mr.

==

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 13-05-2019

Aggrieved by the Judgment dated 17.01.2012 passed in M.V. Claim Case No. 21 of 2010 by which interim award for payment of Rs.50,000/- to the claimant has been passed by the Tribunal against appellant Insurance Company under Section 140 of Motor Vehicle Act (hereinafter stated as 'the Act') for no fault claim liability which has been fastened upon the insurance company although at the time of accident the vehicle was not insured by appellant company.

2. Claimants are widow and two daughters of deceased Hanuman Singh, who died on account of rash and negligent driving by the jeep bearing registration no. BR44P-0283 on 06.07.2010 when they had gone for marketing in a fare. The offending vehicle dash against deceased Hanuman Singh from behind as a result of which he sustained grievous injury and was carried to the hospital, where he died in course of treatment.

3. The FIR was also instituted being FIR of Buxar (M) P.S. Case No. 147 of 2010, under Section 279 and 304 (A) of the Indian Penal Code and after investigation the police found the charges of rash and negligent driving to be true and submitted charge-sheet against the driver.

4. The Driver of the offending vehicle is Barmeshwar Singh and owner is Santosh Kumar Singh, who appeared before the Tribunal and by filing their vakalatnama and also produced the insurance policy showing that the offending vehicle was insured by the appellant- Oriental Insurance Company Ltd.

5. The appellant-Oriental Insurance Company Ltd., also appeared and filed a petition stating therein that the insurance policy which has been produced by the Tribunal by owner of the vehicle is a fake document. However, the Tribunal directed to pay the interim award under Section 140 of the Act of Rs. 50,000/-.

6. Although there was specific plea by the appellant that the policy which has been produced is fake, forged and fabricated document and there is no liability of insurance company to indemnify the owner of the offending vehicle still liability was fastened on the Insurance Company. The owner of the offending vehicle is primary liable to pay the compensation and if the offending vehicle is insured in such circumstances Insurance Company is liable to indemnify the owner of offending vehicle subject to final award passed by the Tribunal. However, in the present case the insurance policy which was produced before the Tribunal on behalf of the owner of the offending vehicle has been stated to be fake document by the appellant- Oriental Insurance Company Ltd.

7. In such circumstance the Tribunal ought not to have fastened the liability of payment of the interim compensation amount upon the appellant-Oriental Insurance Company Ltd., as such the order passed by the Tribunal is not sustainable and is set aside.

8. It has been submitted that by both the parties that the matter is still pending before the Tribunal and petition under Section 166 of the Act is at the stage of evidence. The Tribunal shall consider the liability of payment of claim amount among the

owner, driver and the insurance company and shall pass the judgment and award after fixing liability for payment of compensation amount to the claimant.

9. In the result the order impugned is set aside and liability to pay the interim award shall be on the owner of the offending vehicle.

10. The statutory amount of Rs.25,000/- which has been paid at the time of filing of this appeal by the appellant Insurance Company is directed to be re-funded to the insurance company for which Cheque to be prepared by the office in the name of insurance company and handed over to the learned counsel for the appellant within three months.

11. The present Miscellaneous Appeal is allowed. Let the lower court records be sent back to the learned court below where the case is pending.

(S. Kumar, J)

manoj/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.06.2019
Transmission Date	N.A.