IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.625 of 2013

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The New India Assurance Company Ltd. Branch -4, Morcha Road, Patna city, Patna.

... ... Appellant/s

Versus

Deomuni Kunwar w/o Late Jagnarayan Sah.
2.Pramod Kumar Gupta s/o late Jagnarayan Sah. R/o Mamadeo, P.O. Kauriram, P.S. Mohnia, District kaimur.
3.Sanjay Kumar Singh, s/o Dhunmun singh, r/o Vasant Vihar, Ambedkar Path, Bailey Road, Khajpur, Patna, Bihar.
4.Pidya Roy, s/o late Chandu Roy r/o Kabari, Mohalla, Dhanbad (Jharkhand).

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Bimlesh Kumar Jha, Adv
For the respondentClaimant	:	Mr. Siddharth Harsh, Adv
For the Respondent Owner	:	Mr.Sanjay Kumar-1, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 17-07-2019

Heard learned counsel for the parties.

This appeal has been filed under Section 173 of M.V. Act, 1988, by the Appellant-Insurance Company against the order dated 19.01.2013 passed by learned Adhoc ADJ-II-cum-MACT, Kaimur at Bhabhua, passed in Claim Case No. 29 of 2009, by which appellant-insurance company was directed to pay Rs. 50,000/- as interim compensation to respondents-claimant under Section 140 of the M.V. Act.

Claimants are widow and son of deceased Jag Narayan Sah, who died on 11.09.2009, in a motor accident caused by Truck bearing registration no. BR 1D 8743.

Notices were issued to opposite parties but in spite of valid service of notice owner and driver of the offending vehicle did not appear however, appellant-insurance company appeared and contested the claim case. Appellant-Insurance Company denied its liability as the offending vehicle was not insured at the time of accident. The insurance policy produced before the Tribunal was forged and fabricated. However, in spite of said stand taken by the Appellant-Insurance Company the Claims Tribunal has fastened the liability to pay compensation of Rs. 50,000/- under Section 104 of the M.V. Act upon the Appellant-Insurance Company.

M.V. Act makes it mandatory that all vehicles/owners of vehicles must be compulsorily insured against third party risk. Liability to pay compensation to the claimant is on the owner and driver of the offending vehicle and if the offending vehicle is insured the insurer indemnifies the owner of the vehicle from liability of paying compensation to the Claimants. In the present case, the Appellant-Insurance company had taken a specific plea that the vehicle was not insured on the date of accident and the insurance policy produced before the Tribunal was a fake policy. The Apex Court in its judgment and order in the case of ***National Insurance Company Ltd. vs Jikubhai Nathuji Dabhi*** since reported in ***AIR 1997 SC 2147*** has held that in absence of insurance of the offending vehicle, Insurance company cannot be saddled with the liability to pay the compensation to the Claimants. Under Section 140 of the M.V. Act, 1988. It is the liability of the owner of the offending vehicle to pay the compensation amount. On notice the Owner has appeared and could not produce any valid insurance coverage of the offending vehicle.

For the reasons as stated above, the order dated 19.01.2013 passed by the Claims Tribunal fastening the liability to pay compensation to the Claimants is not sustainable and is, accordingly, set aside. The owner of the offending vehicle is liable to pay the interim compensation to the Claimants and order for payment of interim compensation of Rs. 50,000/- to the Claimants is modified to the extent that same is to paid by the owner of the offending vehicle.

The Miscellaneous Appeal is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2019
Transmission Date	NA