IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11462 of 2018

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Oriental Insurance Company Limited, through its Chief Regional Manager, Patna Regional office, Pirmuhani More, Near Uma Cinema Hall, P.O./P.S. - Kadam Kuan, Patna, through the Asst. Manager Duly Constituted Attorney/Authorized Signatory, Regional Office, Oriental Insurance Company Limited, Regional Office, Pirmuhani More, Near Uma Cinema Hall, P.O./P.S. Kadamkuan, Patna.

... ... OP-1/Petitioner

Versus

1. Sima Devi W/o Lt. Munna Ram,
2. Niraj Kumar, S/o Lt. Munna Ram,
3. Gandhi Kumar, S/o Lt. Munna Ram,
4. Puja Kumari, D/o Lt. Munna Ram,
5. Sudha Kumari, D/o Lt. Munna Ram,
   (Res. 3-5 are minor and are under the guardianship of natural guardian mother Res.1)
   All the above are resident of Village- Pranama, P.S.- Sarmera, dist.- Nalanda.

…. ...Claimant/Respondents.

6. Dinesh Prasad, S/o Tripit Narayan Singh, Resident of Village- Barara, P.O.- Noorsarai, Dist.- Nalanda Owner of the Bus No. BR. 21 G. 8199.

… ...OP-2/Respondent.

7. Mahesh Prasad, S/o Bhattu Ravidas, Resident of Village/P.O./P.S.- Rajgir, Dist.- Nalanda Driver of Bus No. BR 21G. 8199.

… ...OP-3/Respondent.

8. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.

... ... Respondent

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Appearance :
For the Petitioner/s : Mr.Durgesh Kumar Singh, Advocate
For the Respondent/s : Mr.Prashant Pratap -GP2

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 20-08-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

In the nature of the order proposed to be passed no notice is required to be issued to the private respondent nos. 1 to 7.

Petitioner, in the present case, is a Nationalized Insurance Company, who is aggrieved and dissatisfied with the order dated 05.12.2017 as contained in Annexure 'P/6' to the writ application, by which the learned District Judge-cum-Motor Vehicle Accident Claim Tribunal, Patna (hereinafter referred to as the 'Tribunal') has in Claim Case No. 141 of 2017 directed the insurance company to deposit the court fee stamp on the claim petition.

Learned counsel for the petitioner admits in course of hearing that the issues in this regard have been settled by the Hon'ble Division Bench of this court in it's order dated 24.01.2017 passed in Miscellaneous Appeal No. 419/2013 (Annexure 'P/4'), still learned counsel has for some time attempted to address the court showing the difficulties being faced by the Insurance Company in payment of the court fee in various cases filed by the same complainant in different courts and some time in two different States.

Learned counsel for the State submits that since the issues have been settled by the Hon'ble Division Bench of this court in the order as contained in Annexure 'P/4' the

Insurance Company cannot deny payment of the court fee in terms of the judgment of the court. It is, however, agreed by learned counsel for the petitioner as well as the State that in terms of the judgment of the Hon'ble Division Bench the Insurance Company would be liable to pay the amount of court fee payable in terms of Rule 227 when the judgment is delivered and an Award is made for the amount including the memo of cost.

Having heard learned counsel for the petitioner and the State, this court finds that in M.A. No. 419 of 2013 the Hon'ble Division Bench of this court has concluded the issues in the following terms:

> "**27.** Rule 227 provides for payment of fee if the claim is allowed as per the said Rule. If the claim is allowed, the victim is entitled to the compensation, which is required to be deposited within 30 days {Section 169(3)}, such amount of compensation shall include the amount of the costs of the proceedings which include the court fee and other expenses including lawyers fee be paid by the *tortfeasor* as well. Therefore, it is fair and reasonable that the fee, which is contemplated under Rule 227, is directed to be deposited and/or paid by the *tortfeasor,*

which includes driver, owner and in case of contract of insurance, the insurance company. It will avoid the payment of fee by the claimant first and then to recover from the *tortfeasor.* Such procedure will be fair and just as the State would get the revenue and the claimants their compensation, which any case is payable by the *tortfeasor.* Therefore, calling upon the claimants to pay the court fee in terms of the Rules is not warranted keeping in view the object of the 1988 Act.

28. Though the provision itself can be said to be untenable, but to maintain the legality and also to provide solace to the victims, it is ordered that the amount of court fee payable in terms of Rule 227 shall be added in the memo of cost to be prepared and shall be recoverable from the *tortfeasor.* Once the amount of compensation and the cost is deposited, the amount of cost will stand appropriated to the State and the remaining amount shall be paid to the claimants, but calling upon the claimants at the first instance and then to recover from the *tortfeasor* actually multiplies the burden of the claimants, that will be the just and equitable reading of Rule 227."

In view of the judgment of the Hon'ble Division Bench, this court finds that the learned District Judge has not complied with the judgment of this court in it's terms and spirit and has directed the Insurance Company to deposit the court fee at this stage when the Claim Case is still pending and no judgment or Award have been made. The order impugned is, thus, modified to the effect that now the Insurance Company will pay the court fee in terms of the judgment of the Hon'ble Division Bench of this court while depositing the amount of compensation and the cost in terms of the judgment and Award of the Tribunal.

The Writ Application stands disposed of in terms indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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