

IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Civil Miscellaneous Appellate Jurisdiction]

M.A. No. 276 of 2018

Branch Manager, National Insurance Company Limited.

.... .. Appellant(s)

Versus

1.Dinesh Pandit

2.Khushi Kumari (minor)

3.Mahendra Kumar

.. .. . Respondent(s)

.....
CORAM :HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through :-Video Conferencing)

.....
For the Appellant(s) : Mr. Pratyush Kumar, Advocate.

For the Respondent(s) :

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04 / 12.04.2021. Heard, learned counsel for the appellant-National Insurance Company Limited.

2. The Appellant- National Insurance Company Ltd. has preferred the instant Miscellaneous Appeal against the award dated 05.12.2017 passed by learned Principal District Judge- cum-Presiding Officer, Motor Vehicle Accident Claims Tribunal, Koderma in Motor Accident Claim Case No.15 of 2010 (CNR No.JHKD 010000832010), whereby the claimants, 1.Dinesh Pandit and 2.Khushi Kumari (minor) have been awarded compensation to the tune of Rs.3,41,480/- along with interest @ 6% per annum from the date of application i.e. 18.02.2010 till the date of indemnifying the award within one month, failing which, the aforesaid amount with interest shall be realized through process of the Court along with cost of realization.

3. Learned counsel for the appellant, Mr. Pratyush Kumar has assailed the impugned award on the ground that the learned Tribunal has wrongly fastened the Insurance Company with the liability as the insured vehicle (Truck) bearing Registration No.JH12B-5274 against whom the FIR was lodged vide Koderma P.S. Case No.178 of 2008 dated 11.05.2008 (Exhibit-1), corresponding to G.R. No.283 of 2008, for the offence under Sections 279, 337 and 338 IPC and later on Section 304A IPC has been added vide order dated 02.06.2008 against the owner-cum-Driver of the said truck (O.P. No.1), but he was not chargesheeted by the police after conclusion of the investigation while submitting the final form, though the cognizance of the offence has been taken by the Court on the basis of protest petition filed by the informant against the police investigation vide Exhibit-3.

4. Learned counsel for the appellant has further submitted that under the aforesaid circumstances, the alleged truck, which has not been charge-sheeted by the police though insured before the appellant is not the offending vehicle, as such, the impugned award may be set aside and the compensation has to be paid from the solatium fund of the State as the occurrence took place because of unknown offending vehicle.

5. Learned counsel for the appellant has further submitted that for the same, issue No.(iv) has been framed by the learned Tribunal i.e. “whether the offending vehicle (truck) bearing No.JH-12B-5274 was insured with National Insurance Co. Ltd. at the relevant time of accident?” and Issue no.(v) i.e. “Whether there is any violation of terms and conditions of policy and O.P. No.2 is not liable to indemnify the insured (driver-cum-owner)? The driver-cum-owner appeared on 06.06.2014 through his counsel, but in spite of sufficient opportunity provided to him he did not file written statement and his learned counsel endorsed on the ordersheet dated 13.02.2015 that there was no instruction from O.P. No.1, as such, these issues not been decided by the learned Tribunal, as such, impugned order may be set aside.

6. Learned counsel for the appellant has further submitted that there is delay of 64 days in preferring the appeal and for condonation of the same, I.A. No.4526 of 2018 has been preferred before this Hon'ble Court.

7. Learned counsel for the appellant has further submitted that Execution Case has been filed vide Certificate Case No.105 of 2019-20 and for stay of the Execution Case, I.A. No.2738 of 2020 has been preferred before this Hon'ble Court.

8. Considering the rival submissions of the appellant and looking into the facts and circumstances of the case and on perusal of the impugned award, it appears that claimants have examined two witnesses, Dinesh Pandit (A.W.1) and Jitan Pandit (A.W.2) and also exhibited a number of documents, which are Exhibit-1 to Exhibit- 6 and the same are as follows :-

Ext.1- C.C. of F.I.R. of Koderma P.S. Case No.178 of 2008.

Ext.-2-C.C. of protest-cum-complaint petition.

Ext.-3- C.C. of Cognizance order.

Ext.4- Death Certificate of deceased Sharda Devi.

Ext.5-C.C. Of Post-mortem report of deceased Sharda Devi.

Ext.6- C.C. Of Final Form submitted in Koderma P.S. Case No.178 of 2008.

But, on the other hand, O.P. No.2 (National Insurance Company Ltd.) has adduced no oral and documentary evidence.

9. Under the aforesaid circumstances, since the cognizance has been taken by the court below against the offending vehicle (truck) bearing Registration No.JH 12B-5274 and no plea or evidence has been adduced by the Insurance Company to establish that owner of the vehicle has violated the terms and conditions of the policy and even if the owner has appeared but not filed the written statement and learned counsel has endorsed no instruction from O.P. No.1 then also it was incumbent upon the Insurance Company to file an application before the learned Tribunal for a direction upon the owner to produce the relevant document, but in absence of that, it is dispute between the Insurance Company and the owner of the offending vehicle and not with the claimants.

Under the aforesaid circumstances, this Court is not inclined to accept such grounds, which has not been raised by the Insurance Company before the learned Tribunal.

10. Accordingly, the instant Miscellaneous Appeal is hereby dismissed.

11. Since the appeal is dismissed on merits, limitation petition vide I.A. No.4526 of 2018 and stay petition vide I.A. No.2738 of 2020 are closed.

12. Learned Registrar General of this Court is directed to remit the Statutory amount within four weeks to the learned Tribunal/Executing Court which shall be paid to the claimants and the balance amount of award along with the interest in terms of the award of learned Tribunal shall be indemnified by the Insurance Company within a reasonable time as the occurrence is of dated 15.05.2008.

(Kailash Prasad Deo, J.)

Sandeep/