

IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Civil Miscellaneous Appellate Jurisdiction]

M.A. No. 279 of 2018

National Insurance Co. Ltd.

.... ..

Appellant(s)

Versus

1.Jagdish Pandit

2.Rupa Devi

3.Santosh Mandal

4.Ashok Kumar Gupta

.. ... Respondent(s)

.....

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

For the Appellant(s)

:

Mr. Alok Lal, Advocate.

Mr. Santosh Kumar, Advocate

For the Respondent(s)

:

.....

03 / 12.04.2021. Heard, learned counsel for the appellant.

2. The National Insurance Company Ltd. has preferred the instant Miscellaneous Appeal against the award dated 17.11.2017 passed by learned Principal District Judge- cum- Motor Vehicle Accident Claims Tribunal, Sahibganj, in Claim Case No.8 of 2013, whereby the claimants, Jagdish Pandit and Rupa Devi have been awarded compensation to the tune of Rs.5,20,000/- along with simple interest @ 6% per annum from the date of issue i.e. 19.05.2013 to be paid within a period of two months from the date of award, failing which Insurance Company shall be liable to pay penal interest @ 9% per annum from the date of the award till realization. The National Insurance Company Limited is further directed to to pay Rs.5,000/- to the claimant No.2- Rupa Devi.

3. Learned counsel for the appellant, Mr. Alok Lal has submitted that learned Tribunal has completely ignored the evidence brought on record with respect to issue no.(iii) i.e. “ Whether the offending vehicle was insured under the National Insurance Company. Ltd?

4. Learned counsel for the appellant has further submitted that prior to that an order was passed by the learned Tribunal under Section 140 of the MV Act, fastening the liability of ad-interim compensation upon the Insurance Company and the said order was challenged before this Court vide M.A. No.210 of 2011 and after notice the same has been allowed on 02.11.2015. In the said case the owner of the offending vehicle, Ashok Kumar Gupta, S/o Doman Lal Gupta has appeared and this issue was pleaded and accepted by the co-ordinate Bench of this Court.

5. Learned counsel for the appellant has further submitted that while adjudicating the application under Section 166 of the MV act and the same has also been incorporated in para-4 of the impugned judgment in the written statement of the National Insurance Co. Ltd. wherein it has categorically been stated that the offending vehicle i.e. tractor bearing registration No.JH18K-1257 was not insured from his company and the Policy No.C-578733/34/17/08 was not issued in favour of the tractor at Cossim Bazar Branch, of the company was never in function and. to that effect O.P. has examined Chandra Kant Thakur, Branch Manager of National Insurance Co. Ltd., Sahibganj Branch as O.P.W.1, who has categorically stated that in para 2 of his Examination-in-Chief- “बीमा से संबंधित दाखिल कागजात पूर्णतः जाली है एवं कौशीम बाजार, मुर्शादाबाद में अपनी कंपनी का कोई शाखा नहीं है।”

But the same has been rejected by the learned Tribunal on flimsy grounds that the case of the Insurance Paper bears the Branch name in abbreviation as **KBZ, Msd. W.B.** though the claimants have pleaded the name of the Branch as Cossim Bazar, but to challenge the genuinity of the Insurance, the O.P. had to make specific plea that (i) they have not any Branch having KBZ abbreviation. (ii)The Insurance Policy No.C-578733/34/17/08 does not exist or exists for another vehicle (iii) the company has no any development Officer having agency code-221/343 as it appears from the face of insurance paper and (iv) If the company have development Officer of that very agency code, he has to come forward to prove that he has not issued with covered note.

6. Learned counsel for the appellant has further submitted that during cross-examination of Chandrakant Thakur, Branch Manager, National Insurance Co. Ltd., Sahibganj Branch, the Court below has also not put any court question to clarify this stand and the plea by Insurance Company in the written statement and the evidence adduced by the Insurance Company have been rejected without proper and valid reason though order the dated 02.11.2015 in M.A. No.210 of 2011 passed by co-ordinate Bench of this Court attains its finality while adjudicating the application under Section 140 of the MV Act, as such, the impugned award is bad in law.

7. Learned counsel for the appellant has further submitted that there is delay of 88 days in preferring the appeal and for condonation of the same, I.A. No.4550 of 2018 has been preferred. Under the aforesaid circumstances, notice may be issued to the claimants and the owner of the offending vehicle.

8. Considering the same, let notice be issued to owner of the offending vehicle **Ashok Kumar Gupta, S/o Doman Lal Gupta, resident of Village Mina Bazar, Kalayani, Maharajpur, P.O. Sakrigali, P.S. Taljhari, District Sahibganj, owner of the Tractor No.JH18A-1257 Swaraj-735 E.E.)** and claimants, **Jagdish Pandit, S/o Late Rameshwasr Pandit, and Rupa Devi, W/o Late Sagar Pandit, both residents of Village- Mina Bazar, West Maharajpur (Naya Tola) P.S. Taljhari, P.O.- Sakrigali, Panchyat Kalyani, District- Sahibganj PIN 816155,** under both process i.e. registered cover with A/D as well as ordinary process for which, requisites etc. must be filed within a period of three weeks.

Put up this case after service of notice.

(Kailash Prasad Deo, J.)

Sandeep/