

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 294 of 2018

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United India Insurance Co. Ltd. Appellant
Versus
Rameshwar Mahato & Others Respondents

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

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For the Appellant : Mr. Alok Lal, Advocate.
For the Respondents :

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05/13.04.2021.

Heard, learned counsel for the appellant, Mr. Alok Lal.

Learned counsel for the appellant has submitted that the United India Insurance Company has preferred this appeal against award dated 22.12.2017 passed by learned District Judge-IV-cum-M.A.C.T., Dhanbad in M.A.C. Case No.180/2014, whereby the claimants namely Rameshwar Mahato, S/o Late Sewa Mahato and Kaushalya Devi, W/o Rameshwar Mahato have been awarded compensation to the tune of Rs.3,34,000/- alongwith simple interest @ 6% per annum from the date of admission of the suit i.e. 22.08.2014 till the date of realization. The Insurance Company shall indemnify the award within a period of 30 days from the date of order. However, Insurance Company has been given liberty to recover the same from the owner of the Tempo bearing registration no. JH-02AB-7394 and the Insurer of the Tempo i.e. Bharti Axa General Insurance Co. Ltd.

Learned counsel for the appellant has submitted that in the written statement, the Insurance Company has categorically stated that defendant denied that the offending vehicle i.e. Bolero bearing registration No.JH-03A-7098 was insured before Insurance Company at the time of accident and put the defendant no.1, Churaman Mahato, S/o Sri Bechar Mahato, owner of Bolero bearing registration No.JH-03A-7098 to strict proof thereof.

Learned counsel for the appellant has submitted that the Insurance Company has filed a petition with an affidavit sworn on 27.04.2015. The content of affidavit are as follows:-

1. That the Insurance Policy No. 2133048/18/87/13/02095 in the name of Churaman Mahato for the Vehicle No. JH-03A-7089 is FAKE POLICY, as the same has never been issued by any Branch office of United India Insurance Co. Ltd. here at Ranchi.

2. That from the careful perusal of the above Fake Policy, the following discrepancies have been found.

(i) United India Insurance Company Ltd., Ranchi has got no any Branch Office here at Sahid Chowk, Ranchi.

(ii) The office Code of United India Insurance Co. Ltd., Ranchi starts with Code no.210601 but in the Xerox copy of the Policy sent for verification it is mentioned as 2133048, which is not at all the code of our Office.

(iii) That the Seal of United India Insurance Co. Ltd. and the Signature of the Branch Manager is Fake in the aforesaid Policy.

(iv) No Receipt number mention in the aforesaid Policy.

(v) United India Insurance Co. Ltd., Ranchi issues System generated Policies but the Policy sent for verification is Typed.

3. That I have gone through the Statements made here in above and found the same to be true and correct to the best of my knowledge, information and belief.

Sworn and singed this Affidavit here at Ranchi on this the 27th day of April, 2015.

Learned counsel for the appellant has further submitted that though the owner of the Bolero Vehicle, Churaman Mahato has appeared before the learned Tribunal pursuant to the notice, but he has not filed written statement thus he was debarred to file written statement.

Learned counsel for the appellant has submitted that while discussing Issue nos. 3, 4, 5 & 6 at para-14 of the impugned judgment, the learned Tribunal has considered the documents mentioned in para-11 of the impugned judgment, but did not specifically mentioned the affidavit sworn by the Insurance Company on 27.04.2015, as stated above, as such, the liability, which has been fastened upon the Insurance Company with right of

recovery from the defendant no. 3, owner of Tempo bearing registration no. JH-02AB-7394 and defendant no. 4, Insurer of Tempo bearing registration no. JH-02AB-7394 is unnecessary, as Policy is fake, as such, the entire liability should be upon the owner of Bolero and there is no reason that why the learned Tribunal has given right of recovery in favour of the Insurance Company after indemnifying the award to the claimants.

Learned counsel for the appellant has submitted that had it been a case that Insurance Policy is genuine and there is violation of the terms and condition of the policy, then right of recovery could have been given, which may be considered to be justified, but in case where policy is fake, no such liability can be fastened upon the Insurance Company.

Learned counsel for the appellant has further submitted that there is delay of 15 days in preferring the appeal and for condonation of same, I.A. No.4669/2018 has been preferred.

Let notice be issued to respondent no. 3 Churaman Mahato, S/o Bechar Mahato, resident of Village & P.O. - Harli, P.S. - Barkagaon, District – Hazaribagh (Jharkhand), (Owner of Bolero bearing registration no. JH-03A-7089), so as to place the insurance paper of the offending vehicle and also to the respondent nos. 1 & 2 i.e. claimants Rameshwar Mahato, son of Late Sewa Mahato and Kaushalya Devi, wife of Rameshwar Mahato, both resident of Village – Koiritand, P.O. - Achaljamo, P.S. - Bishungarh, District – Hazaribagh (Jharkhand), at present resident of Manaitand, P.O. & P.S. - Dhansar, District – Dhanbad (Jharkhand), on their both address, under both process i.e. under registered cover with A/D as well as ordinary process, for which requisites etc. must be filed within a period of three weeks with liberty to the claimants that they may also prefer an appeal, if so they advised.

(Kailash Prasad Deo, J.)