

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)

M.A. No. 680 of 2018

.....
Bajan Allianz General Insurance Co. Ltd. Appellant
Versus
Gauri Devi & Ors. Respondents

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

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

04/Dated: 26/03/2021.

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

Learned counsel for the appellant has submitted that appellant- Bajan Allianz General Insurance Co. Ltd. has preferred this appeal against the award dated 27.03.2018 passed by learned Principal District Judge- cum- P.O.-Motor Accident Claim Tribunal, Godda in Claim Case No.30 of 2015, whereby the claimants have been awarded compensation to the tune of Rs.10,23,275/-, after deducting Rs.50,000/- which has already been paid to the claimants under Section 140 of the MV Act to be paid within one month, failing which the claimants shall be at liberty to get it recovered through the process of this tribunal and they will further be entitled for 7% simple interest on the award amount from the due date and till its realization.

Learned counsel for the appellant has submitted that instant appeal has been preferred by the Insurance Company against the owner of the offending vehicle namely, Sushil Yadav, S/o Bhola Yadav, (owner of Savari No.- JH04C/7291) R/o Village- Bela Sobhanpur, Kotoria, P.O. - Amarpur, District- Banka (Bihar).

Learned counsel for the appellant has further submitted that the learned Tribunal while deciding the claim application has framed the issue no.(iv) i.e. Whether the driver of the offending vehicle had possessed valid & effective driving licence at the time of alleged accident? and issue no. (v) i.e. Whether the accident had taken place on account of the fault of driver of the offending vehicle bearing Registration No.- JH04C-7291?

And to that effect the Insurance Company has pleaded in his written statement that driver of the offending vehicle was under the influence of

alcohol at the time of accident, which is violation of terms and conditions of the policy. O.P. No.1 (Sushil Yadav) never brought to the notice of O.P. No.2- Bajan Allianz General Insurance Co. Ltd. that death of deceased was caused by offending vehicle, which is mandatory provision under MV Act. It is further stated that O.P. No.1 (Sushil Yadav) may be directed to supply copy of driving licence, R.C. Book, Tax-Token, Certificate of Fitness, Insurance Policy, M.V.I report and DL to O.P. No.2 (Bajan Allianz General Insurance Co. Ltd.).

Learned counsel for the appellant has further submitted that Exhibit-B has been brought on record by the Insurance Company, which is letter dated 12.01.2016 issued by the Insurance Company to the owner asking him to deposit the permit, but even then permit has not been submitted so as to verify the same, as such, co-ordinate Bench of this Court in terms of order dated 29.03.219 has issued notice upon respondents, which has been validly served, but nobody appears on behalf of the respondents.

Learned counsel for the appellant has further submitted that there is delay of 116 days in preferring the instant appeal and for condonation of the same, I.A. No.10253 of 2018 has been preferred.

Learned counsel for the appellant has further submitted that Executing Court is proceeding in Title Execution Case No.12 of 2019 and for stay of the same, I.A. No.7652 of 2019 has been preferred before this Court.

Considering such submissions, the Secretary, District Legal Service Authority, Godda is directed to verify that whether the claimants require any legal assistance under Section 12 of the State Legal Services Authority Act or not?

So far the service report upon respondent no.7, Sushil Kumar (kept at Flag-X7) is concerned, it appears that notice upon respondent no.7- Sushil Yadav, S/o Bhola Yadav, (owner of Savari No.- JH4C/7291) R/o Village- Bela Sobhanpur, Kotoria, P.O.- Amarpur, District- Banka (Bihar) has been received by his son, Rajiv Kumar on 09.05.2019, but even then respondent no.7 has not appeared before this Court.

Under the aforesaid circumstances, the Superintendent of Police, Banka, Bihar is directed to executeailable warrant of arrest of Rs.5,000/-

with two sureties upon the owner of the vehicle, respondent no.7 through the Officer-in-charge, Amarpur Police Station so as to ensure attendance of the owner of the vehicle/respondent no.7 before this Court.

The learned Registrar General, Hon'ble High Court of Judicature at Patna is directed to ensure compliance of the order and after execution of the bailable warrant of arrest by the concerned, Officer-in-charge, the same shall be informed to the registry of this Court.

Let the appeal be listed after submission of the report by the Officer-in-charge of concerned police station.

In the meantime, the appellant shall deposit the entire awarded amount before the learned Tribunal in terms of the award passed by the learned Tribunal within a period of 90 days from today, which shall be deposited in a nationalized bank so that neither the Insurance Company nor the claimants shall suffer any loss.

However, the claimants are at liberty to file an application for release of the same after their appearance in this Miscellaneous Appeal.

Let a copy of this order be communicated through FAX to the learned Registrar General, High Court of Judicature at Patna and the Superintendent of Police, Banka, Bihar at once.

(Kailash Prasad Deo, J.)