

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 187 of 2018

.....
Branch Manager, New India Assurance Co. Ltd.

.... Appellant

Versus

Logi Kisku & Others

.... Respondents

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

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

For the Respondents :

.....

04/05.04.2021.

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

Learned counsel for the appellant has submitted that New India Assurance Company Limited has preferred this appeal against the award dated 19.12.2017 passed by learned District Judge-I-cum-Presiding Officer, M.A.C.T., Jamtara in M.A.C.C. Case No. 12/2011, whereby the claimants namely, Logi Kisku and Manoj Murmu have been awarded compensation to the tune of Rs. 3,16,000/- along with interest @ 7% per annum from the date of filing of the claim application till its realization.

Learned counsel for the appellant has submitted that the learned Tribunal has given conditional right to recover the amount in para-10 in page-9 of the impugned award holding that Insurance Company has questioned only driving licence that driver was not having valid licence, therefore, there is violation of terms and conditions of the policy, but it does not absolve the liability of Insurance Company. In this regard, it can be further said that the Insurer Company can take defence under Section 149 of M.V. Act that the vehicle was being driven by a person, who was not having any valid licence but the Insurer cannot disown its liability on the ground that there was no valid licence and thus a breach of violation of the terms and conditions of the Policy. In such a case, it is for the Insurer to proceed against the Insured for recovery of the amount in the event there has been violation of any conditions of the Insurance Policy.

Learned counsel for the appellant has submitted that the Insurance Company has adduced the evidence of D.W.-1 to the effect that the driving licence of the driver was found fake, as such, the

judgment passed by the Apex Court in the case of **Nirmala Kothari Vs. United India Insurance Co. Ltd.** reported in **2020 (4) SCC 49** is not come for rescue for owner of the vehicle, if such driving licence of driver of the offending vehicle is fake, then, instead of granting such conditional order, the learned Tribunal ought to have granted right of recovery in favour of the Insurance Company after indemnifying the award, as such, notice may be issued to the owner and driver of the offending vehicle namely, Sita Murmu, D/o Mr. B.N. Manjhi, Resident of Village – Khijuria, Banderjori, P.S. - Dumka Mufasil, District – Dumka and also at her present address i.e. at Sector 1/C, Quarter No. 14, P.O. & P.S. - Bokaro Steel City, District - Bokaro and to Biju Hansda, S/o Rasik Hansda, Resident of Village – Guhiyajori, P.O. - Guhiyajori, P.S. - Bindapathar and District – Jamtara.

Learned counsel for the appellant has further submitted that there is delay of 12 days in preferring the appeal by the Insurance Company and for condonation of the same, I.A. No. 4825/2018 has been preferred.

Considering such submissions, let notice be issued to the respondents (1) Logi Kisku, wife of Late Motilal Murmu, (2) Manoj Murmu, son of Late Motilal Murmu, both residing at Village & P.O. - Pahargora, P.S. - Bindapathar, District – Jamtara, (3) Sita Murmu, daughter of Mr. B.N. Manjhi, Resident of Village – Khijuria, Banderjori, P.S. - Dumka Mufasil, District – Dumka and also at her present address at Sector 1/C, Quarter No. 14, P.O. & P.S. - Bokaro Steel City, District – Bokaro and (4) Biju Hansda, S/o Rasik Hansda, Resident of Village – Guhiyajori, P.O. - Guhiyajori, P.S. - Bindapathar and District – Jamtara, under both process i.e. under registered cover with A/D as well as under ordinary process, for which requisites etc. must be filed within two weeks.

Office is directed to verify as to whether any analogous appeal is pending before this Court or not?

List this case after service of notice.

(Kailash Prasad Deo, J.)