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(2015) 04 JH CK 0155

In the Jharkhand High Court

Case No : Misc. Appeal No. 217 of 2011

National Insurance Company Ltd. and Others APPELLANT

Vs

Sabitri Devi and Others RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 168

Citation : (2015) 3 ACC 890

Hon'ble Judges : Amitav Kumar Gupta, J

Bench : Single Bench

Advocate : D.C. Ghosh, for the Appellant; Raja Ravi Shekhar Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amitav Kumar Gupta, J—This appeal is directed against the order dated 20.8.2011 passed by the learned District Judge, Sahibganj-cum-Motor Accident Claims Tribunal in MAC Case No. 3 of 2011, whereby the interim compensation of Rs. 50,000, under Section 140 of the Motor Vehicles Act, has been awarded on account of death of Goberdhan Yadav, the father of respondent Nos. 2 and 3 and the husband of respondent No. 1. Mr. D.C. Ghose, learned Counsel, for the appellants has submitted that the application under Section 140 of the Motor Vehicles Act, 1988 (for short Act) was filed for payment of interim compensation on account of death of one Goverdhan, Yadav, the husband and father of claimants, i.e., respondent Nos. 1, 2 and 3. It is argued that the claimant had filed insurance policy bearing No. 85012/17/34/08 alleged to have been issued by National Insurance Company Ltd., Branch Office at Kasim Bazar, Murshidabad. The appellant in his written statement has categorically asserted that the Insurance Company does not have any Branch at Kasim Bazar, Murshidabad and the aforesaid insurance policy was a fake and forged document. That the Court below without ascertaining the genuinity or veracity of the insurance policy has passed the order fixing liability upon the Insurance Company to pay the interim

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compensation of Rs. 50,000 (Rupees fifty thousand) and recover the amount from the owner.

It is contended that the Tribunal failed to appreciate the fact that the owner or the driver of the vehicle have nowhere denied the assertion of the Insurance Company that the said policy was fake and forged document. It is argued that the owner had challenged the maintainability of the application independently under Section 140 of the Act sans any application under Section 166 of the Act. That the owner of the vehicle had not produced the insurance policy in the Court below neither did he state that the said vehicle was insured vide the aforesaid policy.

It is urged that though a detailed inquiry is not required to be conducted on an application filed under Section 140 of the Act, but in a case where the insurance policy has been denied by the Insurer, the Tribunal is duty-bound to give a finding whether the vehicle is validly insured or not, particularly in an application filed independently under Section 140 of the Act.

On the above grounds, learned Counsel has submitted that the impugned order is fit to be set aside.

2. Per contra, Mr. Raja Ravi Shekhar Singh, learned Counsel, for respondent No. 5 and Mr. S. Thakur, learned Counsel, for the claimant have submitted that the Court below has discussed the provisions of law and held that even if the insurance policy is found to be fake, the Court can order interim compensation to be paid by the Insurance Company and the said amount can be recovered by the Insurance Company from the owner.

3. Heard. Perused the impugned order and the judgment relied on by the Tribunal. On perusal of the decision in the case of The Oriental Insurance Co. Ltd. Vs. Rahim Ansari and Others, (2003) 2 ACC 365 : (2003) 1 JCR 622 , relied on by the Court below, wherein it has been held that the liability of the Insurance Company to pay award come into operation only if the Court arrives at a definite opinion that the Insurance Company had insured the vehicle and policy was effective at the time of the accident. Even in the case of United India Insurance Co. Ltd. Vs. Chandra Marandi and Others, (2007) 3 JCR 594 , it has been held by the Court that the interim compensation, under Section 140 of the Motor Vehicles Act, can be decided by the Tribunal and it has only to be seen as to whether the offending vehicle was involved in an accident and was insured by the Insurance Company. The Court, below has also relied on the decision reported in The Oriental Insurance Company Ltd. Vs. Sundri Hembrom and Others, (2011) 3 TAC 590 , in the case of Oriental Insurance Company v. Sundri Hembrom. & Ors., and directed payment of the interim compensation holding that the genuinity of the policy will be considered at the time of the compensation to be awarded under Section 168 of the Motor Vehicles Act.

4. Admittedly, in the present case application has only been filed under Section 140 of the Motor Vehicles Act. The judgments relied on by the Tribunal

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specifically states that if the Court is of the definite opinion that the Insurance Company had insured the vehicle and policy was effective at the time of accident then interim compensation can be awarded. In the instant case, the genuinity and authenticity of the insurance policy has been challenged at the threshold the owner of the vehicle has not denied the assertion of the Insurance Company. In such circumstance the Tribunal, i.e., the Court below should have directed the owner of the vehicle to produce the said insurance policy and should have given an opportunity to the Insurance Company to verify the genuinity of the document thereafter, should have passed the order under Section 140 of Act.

No doubt, Section 140 of the Motor Vehicles Act is beneficial legislation based on the principle of no fault liability, but in the instant case, as per the emergent facts, the application was filed simplicitor under Section 140 of the Motor Vehicles Act and the decisions relied on by the Court below are based on the facts where an application under Section 140 of Act had been filed along with Section 166 of the Act. In the decisions relied upon by the Court below it has been categorically held that if the Court is of the ''definite opinion'' that the vehicle was validly insured then it can pass the order awarding interim compensation. Such ''definite opinion'' of the Court can only be arrived when a preliminary inquiry is conducted and parties given an opportunity to adduce evidence on this aspect. Apparently, the facts on which the decision were rendered in the said cases are distinguishable from the instant case where the application has been filed under Section 140 simplicitor, sans an application under Section 166 of the Act.

In the attending facts and circumstances, the matter is remitted to the Court below to decide the matter after giving an opportunity to the parties to prove the validity and genuinity of the policy which has been repudiated by the Insurer and thereafter, pass necessary order by fixing the onus and liability on a party for payment of the interim compensation amount. The beneficial object of Section 140 of the Act cannot be interpreted in such a manner giving latitude to a party to escape his liability by producing a fake and forged document, as this would amount to defeating the scope and object of the provisions of law.

5. With the said directions and observations, the impugned order is, hereby, set aside and the appeal is allowed to the extent noted above. Statuary amount of Rs. 25,000 (Rupees twenty-five thousand), if any deposited by the said Insurance Company shall be returned on the application being filed before the Registrar General of the High Court.

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