(2007) 03 PAT CK 0071

In the Patna High Court

Case No : Miscellaneous Appeal No. 563 of 2000

National Insurance Company Ltd. APPELLANT

Vs

Rinku Devi and Others RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Citation : (2007) 3 PLJR 21

Hon'ble Judges : Syed Md. Mahfooz Alam, J

Bench : Single Bench

Advocate : Ajay Kumar and Renu Jha, for the Appellant; Shiva Nandan Ray and Rama Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Syed Md. Mahfooz Alam, J.—This miscellaneous appeal has been preferred against the judgment dated 18.8.2000 and Award dated 14.3.2001 passed by Sri Baikunth Nath Shahi, 3rd Additional District Judge-cum-Motor Vehicle Accident Claims Tribunal, Begusarai, in Claim Case No. 64/98/18/ 2000 whereby he has teen pleased to award compensation to the claimant to the tune of Rs. 2,57,000/- and directed the appellant-Insurance Company to pay the entire compensation amount with 12% interest from the date of filing of he application till the payment. During the course of argument, Sri Ajay Kumar, learned Advocate appearing on behalf of the appellant-Insurance Company raised only one point. He contended that the record of the claim case will show that on the alleged date of occurrence i.e. on 7.9.98 the insurance policy was not in existence as prior to that i.e. on 18.8.98 the appellant-Insurance Company had already informed the insured through Exhibit-A that the Insurance Company had cancelled the policy as the cheque issued by him had been returned by the bank as being dishonoured. Learned advocate submitted that after cancellation of policy on 18.8.98 it will be deemed that since that date the vehicle, in question, was not covered under the policy and, as such, the appellant-Insurance Company is not liable to pay compensation but by asking the appellant-Insurance Company to indemnify the award, the Tribunal has committed illegality. In this regard, the learned Advocate of the appellant has placed reliance upon the following decisions: (I) New India Assurance Co. Ltd. Vs. Raghu, , (II) National Insurance Co. Ltd. Vs. Khelli Bai and Others, , and (III) National Insurance Co. Ltd. Vs. Seema Malhotra and Others, .

2. It is true that where on the date of occurrence the policy is not in existence either due to non-payment of premium or due to any other reason,, the Insurance Company is not liable to indemnify the award but I am of the view that once the Insurance Company issued the policy in respect of any vehicle the Company is liable to pay compensation with respect to the third party claim and then to realise the entire amount so paid towards compensation from the owner of the vehicle by way of filing petition in execution proceeding. To support my view, I place reliance upon the decision reported in Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, Para 8 of the said decision is relevant which runs as follows:

"Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur case that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs".

3. The above referred decision fully applies in this case also and, as such, I hold that this appeal by appellant-Insurance Company is not maintainable. In the result, I do not find any merit in this appeal and the same is hereby dismissed with direction to the appellant-Insurance Company firstly to pay the entire compensation and then to realise the same from the owner of the vehicle by filing a petition before the executing court in accordance with the direction of the Apex Court contained in the above referred judgment. The Insurance Company is further directed to pay the entire compensation within a period of two months

from today after deducting the amount already paid, failing which the claimant will be at liberty to realise the same through the process of the court. The claimant is permitted to withdraw the statutory amount deposited in this Court towards part payment of compensation amount.