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(2020) 01 JH CK 0240

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 680 Of 2017

New India Assurance Co. Ltd — APPELLANT

Vs

Shyamoli Gan And Ors — RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Citation : (2020) 01 JH CK 0240

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Alok Lal, M.B. Lal, Sheo Kr. Singh

Final Decision : Dismissed

Judgement

1. The appellant Assurance Company has preferred this appeal against the award dated 01.07.2017 passed in Title (M.V.) Claim Case No.29 of 2015

passed by learned District Judge VIII-cum-MACT, Dhanbad whereby the claimants have been awarded compensation to the tune of Rs.6,07,500/-

along with interest @6% per annum from the date of filing of the claim application i.e. 22.01.2015. Defendant no.2/appellant is directed to pay

compensation amount to the claimants within a period of 60 days from the date of this order and defendant no.2 will be at liberty to realize the

compensation amount from defendant no.1.

2. Learned counsel for the appellant has submitted that the learned Tribunal has wrongly fastened the liability to pay the compensation amount upon

the Assurance Company though right to recovery from owner of the offending vehicle has been given in favour of the Assurance Company. Learned

counsel for the appellant has submitted that the deceased Manoj Gan was going to his native village Haripur on 02.10.2009 along with his son Tapas

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Gan by boarding on Vijay Bus bearing registration no.WB-37/6621 as a bonafide passengers. Manoj Gan met with an unfortunate accident at about

8.00 A.M. on Jamtara road near Jamtara Refactory due to rash and negligent driving by the bus driver. Manoj Gan fell down from the bus and

received grievous head injury leading to intra cranial haemorrhage and succumbed to the injury during course of treatment at Sai Hospital, Bokaro.

Learned counsel for the appellant has submitted that the Insurance Company had filed written statement. It has been admitted by the Insurance

Company that the vehicle bearing registration no.WB-37/6621 was insured with the Insurance Company at the time of accident. Learned counsel for

the appellant has submitted that on perusal of the FIR, it shows that the deceased was travelling on the roof of bus which is violation of terms of

insurance policy, as such, the learned Tribunal has wrongly saddled the Insurance Company with the compensation amount.

3. Learned counsel for the claimants-respondents has submitted that since the dispute is with regard to right of recovery between the Assurance

Company and the owner, as such, he has nothing to say on this point.

4. Heard, learned counsel for the parties and perused the materials brought on record. It appears that the vehicle bearing registration no.WB-37/6621

was insured with the New India Assurance Company Limited vide policy no.512100/31/09/01/00000215 valid from 01.08.2009 to mid night of

31.07.2010 and the accident took place on 02.10.2009. The owner of the offending vehicle did not appear and therefore the proceeding was fixed ex-

parte. The driving license of the driver Manoj Kumar Yadav was not brought on record, therefore while deciding issue no.4, the learned Tribunal has

presumed that the driver of the offending vehicle did not have any valid and effective driving license on the date of the accident and as such, there is

violation of the insurance policy.

5. However, it appears that the owner of the offending vehicle, respondent no.6 has been noticed by this Court vide order dated 06.03.2018 but he

refused to accept the same on 08.04.2018, as such, notice upon respondent no.6 was deemed to be validly served vide order dated 04.04.2019.

6. So far the liability fastened upon the Assurance Company is concerned, since the learned Tribunal has considered this aspect of the matter while

deciding issue no.4 in para-15 at page no.5 of the impugned Award, whereby it

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has been held that owner of the offending vehicle has violated the

terms and conditions of the Insurance policy, but as per settled law, the appellant-insurance company shall initially pay the awarded amount which can

be legally recoverable from the owner of the offending vehicle, in view of the judgment passed by the Hon'ble Apex Court in the case of Oriental

Insurance Co. Ltd. vs. Nanjappan and Others, reported in (2004) 13 SCC 224, this Court is not inclined to interfere with same.

7. The right to recovery given to the Insurance Company remains intact and as such, no interference is made by this Court.

8. The instant appeal stands dismissed.

9. The Registrar General of this Court is directed to refund/reimburse the statutory amount to the appellant within a period of four weeks from the

date of filing of requisition before this Court by the learned counsel for the appellant.

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