

(2017) 08 PAT CK 0010

In the Patna High Court

Case No : 161 of 2012

Regional Manager ,The Oriental Insurance Company Ltd

APPELLANT

Vs

Rajeev Kumar S/O Sri Ramiranjan Singh

RESPONDENT

Date of Decision : 04-08-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#), [Section 140](#), [Section 140](#) - Appeals - Liability to pay compensation in certain cases on the princ

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Hon'ble Judges : Rajendra Menon

Bench : SINGLE BENCH

Advocate : Ashok Priyadarshi, Alok Kumar @ Alok Kr. Shahi

Final Decision : Dismissed

Judgement

1. This is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 challenging an interim award dated 16.1.2012, passed by the Motor Vehicles Claims Tribunal-cum-Addl. 9th Addl. District Judge, Patna in M.V. Claim No.254 of 2009 under Section 140 of the Motor Vehicles Act,1988 and directing the Insurance Company to deposit the sum of Rs.50,000/- by way of interim award, under no fault liability Clause.
2. The only objection raised in this appeal by the Insurance Company is that the accident in question took place on 5.3.2009 and in the policy issued with regard to insurance of the vehicle, the period of insurance is shown between 7.3.2009 to 6.3.2010 and as

the period of policy commences from a date after the accident, the Tribunal committed an error in rejecting the claim. It was argued by the learned counsel for the Insurance Company that merely because premium was tendered on 5.3.2009, that cannot be a ground for granting coverage when the terms and conditions of the policy indicates that the insurance was for the period between 7.3.2009 to 6.3.2010. Placing reliance on the judgments in the cases of New India Assurance Co. Ltd. Vs. Ram Dayal and Ors., , New India Insurance Co. Vs. Bhagwati Devi and Ors., , New India Assurance Co. Ltd. V. Smt. Sita Bai and others, AIR 1999 SC 3577 and Oriental Insurance Co. Ltd. Vs. Porselvi and Anr., learned counsel for the Insurance Company argues that once the period of insurance is indicated in the insurance policy, the operation of the insurance coverage and the liability of the Insurance Company commences from the date the insurance policy is issued and if a particular time and period is indicated in the policy from the time otherwise from the midnight at 12:00 from the date from which the coverage is indicated. Emphasizing that in awarding the interim compensation in this regard contrary to the principles laid down by the Hon''ble Supreme Court an error has been committed, this appeal has been filed.

3. Refuting the aforesaid contention, learned counsel for the respondent places reliance on a judgment of the Allahabad High Court in the case of New India Assurance Company Ltd. Vs. Poonam Tripathi, (2015) 1 ADJ 15, to say that once premium has been accepted and paid to the Insurance Company, the coverage would be from the date of receipt of the premium.

4. Having heard learned counsel for the parties at length and on going through the material available on record, I am of the considered view that in this case the judgments relied upon by the

learned counsel for the Insurance Company cannot be made applicable as the facts of this case are entirely different. Apart from the fact that this is an interim award, in para 9 of the written statement of the Insurance Company before the Tribunal, it is admitted by them that the premium has been paid by the owner of the vehicle to the Insurance Company on 5.3.2009 in cash, but in the policy the period of coverage indicated is between 7.3.2009 to 6.3.2010. In fact, the statement made in the written statement in para 9 reads as under:

"9. That though the premium has been paid by the insured (owner of the vehicle, the O.P.No.2) on 05.03.2009 in cash but he has taken the policy period from 07.03.2009 to 06.03.2010 which is very much evident from the policy copy, and only insured can explain the situation that why he has taken the policy for the above period."

5. From the aforesaid, it is clear that the Insurance Company admits the position that the premium was paid in cash to the Insurance Company on 5.3.2009. Thereafter, the Insurance Company in para 11 also referred to a vehicle inspection report to say that it is in the name of the owner Rajeev Kumar who has prepared the report and, therefore, it cannot be relied upon. The said report is also available on record. It is signed by the authorized signatory and it is recommendation made for insuring the vehicle and it shows that inspection was done and the premium has also been paid. Apart from the aforesaid, the Insurance Company along with the memorandum of appeal has itself filed the certificate-cum-policy vide Annexure-2 and on a perusal of this document it would be seen that all the particulars of the vehicle and the owner etc. are given, the period of insurance is shown to be between 7.3.2009 to midnight of 6.3.2010, but immediately in the next line it is indicated that vide collection Memo. No.CSH 4110005381 on 5.3.2009 the premium has been deposited. Finally, in the second page of this

certificate in the right hand side column there is the signature of the authorized representative of the Insurance Company and on the left side is the place and date of issuance of the policy and if we go through the date given in this place, the date is 5.3.2009.

6. It is surprising that the Insurance Company admitted in the written statement that the premium amount was paid in cash on 5.3.2009, the policy document filed by them admits this position and even shows issuance of the policy on 5.3.2009, but, surprisingly, the period of coverage is shown as between 7.3.2009 to 6.3.2010. This is a peculiar policy and it is not the case of the Insurance Company that the premium was deposited after the accident and, therefore, they are not liable. There is no whisper anywhere in the whole written statement or in this memorandum of appeal that the premium was paid after the accident or there is a fraud in obtaining the policy. On the contrary, the vehicle inspection report and the bill for the same goes to show that inspection of the vehicle took place on 5.3.2009 at 10:00 a.m. in Munger and the accident in question is said to have taken place much after this time.

7. That being so, in the peculiar facts and circumstances of the case, when prima facie it is established that the premium was paid on 5.3.2009 in cash to the Insurance Company, the Insurance Company admitted receipt of the premium on the basis of the averments made before me and the law laid down in this case when only an interim award is passed based on prima facie material available on record, I see no reason to make any indulgence into the matter. It is made clear that all the legal questions involved in the matter are kept open to be considered, in case not already done, after recording the evidence in the trial and the assessment hereinabove is only a provisional assessment for considering interference at this interlocutory stage when only an interim award has been passed.

8. Taking note of the aforesaid facts and circumstances of the case, I am not inclined to interfere into the matter at this stage of passing of an interim award.

9. The appeal is therefore dismissed.