(2011) 03 JH CK 0117

In the Jharkhand High Court

Case No : M.A. No. 332 of 2006

The Oriental Insurance Company Ltd. APPELLANT

Vs

Sundri Hembrom and Others RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2011) 8 RCR(Civil) 1104 : (2011) 3 TAC 590

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Judgement

Poonam Srivastav, J.—Heard counsel for the Insurance Company.

2. The instant Misc. Appeal has been preferred against the Order dated 12.06.2006 in Compensation Case No. 109 of 2003[Sundri Hembram and Ors. v. Srikant Pasndey and Anr.]. The order is passed u/s 140 of the Motor Vehicles Act granting an ad-interim compensation under the principle of No Fault Liability envisaged under the Act.

3. The instant case is of a death. The submission on behalf of the Insurance Company is that the owner has not yet put in appearance and the Insurance Policy is a lake Policy. The original Insurance Policy has not been brought before the Court and in the event it is fake, it is the liability of the owner of the vehicle and not the Insurance Company.

4. Learned Counsel has placed reliance on a Division Bench decision of the this Court in the case of The Oriental Insurance Co. Ltd. v. Rahim Ansari and Ors. [2003 (1) JCR 622]. The Division Bench laid down the principle that the liability of the insurer to pay the Award comes into operation only when the Court arrives at a definite conclusion that the Insurance Company had insured the vehicle and the Policy was effective at the time of accident.

5. The principle laid down in the aforesaid decision is not at all disputed but in the instant appeal, the stage of the order passed is one u/s 140 of the Motor

Vehicles Act which is provided only as an interim benefit to the claimant who have lost their family member in the accident. So far the Division Bench decision mentioned aforesaid is concerned, it was only after the claim petition was decided finally and the Court was of the view that the Insurance company had not insured the vehicle and the Policy was not genuine.

6. In the aforesaid facts and circumstance: I am not inclined to interfere at this stage since the Claim Tribunal is still seized of the matter. A definite conclusion will be arrived at regarding genuineness of the Insurance Policy at the final stage.

7. In the end, learned Counsel also makes submission that since the owner has not yet put in appearance, in the event the Insurance Policy is found to be fake, then the money deposited at the behest of the Insurance Company will not be recovered and the Company will be put to suffer loss. Therefore, the claimant should not be allowed to withdraw the amount.

8. I am not in agreement with the said submission since as an interim measure the aforesaid provision has been made u/s 140 of the Motor Vehicles Act to provide some benefit and relief to the family members of the deceased who has no source of income. The question as to how Insurance Company should be reimbursed will be taken care by the Tribunal at the stage of final decision and in the event the owner fails to appear then it can always be recovered from the asset of the owner. This goes without saying and it does not call any observation or direction by this Court at this stage. This order will however have no effect on merit of the case. The statutory amount deposited in this Court shall be remitted to the Trial Court.

9. With the aforesaid observation and directions, this appeal stands disposed of.

