

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)

.....
M.A. No. 574 of 2018

Nawab Ali, Son of Late Maqbool Ahmad

..... Appellant

Versus

1. Md. Shamsul Ansari, S/o Late Rahman Mian
2. Jahan Ara Khatoon W/o Md. Shamsul Ansari
3. I.C.I.C.I. Lombard General Insurance Co. Ltd.
4. Shiv Prasad Gour, S/o Jai Karan Prasad,
5. Kamal Nath Mahto, S/o Aghnu Mahto

..... Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO

For the Appellant

: Md. Afaq Ahmed, Advocate

For the Respondents

:

03/Dated: 11/10/2019.

Heard, learned counsel for the appellant, Mr. Afaq Ahmad.

The appellant, owner of the offending vehicle Scorpio No. JH-02E-9867, which was driven by his own son Irsad Ali dashed the standing Truck bearing Registration No. BR-14A-1977.

Learned counsel for the appellant has submitted that son of the appellant Irsad Ali subsequently died because of injury sustained in the said motor accident. Learned counsel for the appellant has submitted that Samsher Ali and Md. Naushad Ali were the occupants of the Scorpio, which hit standing Truck bearing Registration No. BR-14A-1977 but the owner of the Scorpio has been saddled with compensation to the tune of Rs. 6,01,200/- along with interest @ 7.5 % from the date of settlement of the issue payable to the claimants, Mr. Samsul Ansari and Jahan Ara Khatoon father and mother of the deceased namely, Samsher Ali.

Learned counsel for the appellant has further submitted that another Miscellaneous Appeal has been preferred by the appellant against the claim case with respect to another deceased- Md. Naushad vide M. A. No. 573 of 2018, which is also pending before this Court. Learned counsel for the appellant has submitted that the vehicle was insured before the Insurance Company i.e. ICICI Lombard General Insurance Company Ltd., who have paid compensation for repair of the damaged Scorpio vehicle but the learned Tribunal has wrongly passed the order considering that the vehicle was not insured before the Insurance Company as the claimants have only adduced the cover note of the Insurance Policy and not the Insurance Policy paper before the learned Tribunal. Learned counsel for the appellant has further submitted that the said Insurance Policy has been brought on record as Annexure-6 in the

second supplementary affidavit filed by the appellant on 03.09.2019 as such, the appellant has a very good case and there is chances of his success. Learned counsel for the appellant has further submitted that I. A. No.7511 of 2019 has been filed for stay of the further proceeding in Execution Case No.27 of 2018.

Heard, learned counsel for the appellant and perused the materials brought on record. From perusal of second supplementary affidavit, it appears that the Insurance Policy has been brought on record. The learned Tribunal has considered the stand of the Insurance Company though Insurance Company has already indemnified the repairing cost of the vehicle but while considering the compensation the Tribunal has taken note that Insurance Policy was not valid as only cover note has been brought on record.

Under the aforesaid circumstances, let notice be issued to the Insurance Company- ICICI Lambard General Insurance Company Ltd. Learned counsel for the appellant is directed to serve two copies of memo of appeal along with both supplementary affidavits upon the counsel for the ICICI Lambard General Insurance Company Ltd. namely, Mr. Amit Kumar Das, who generally appears for the said Insurance Company within a period of one week from today.

So far I. A. No.7511 of 2019 is concerned, since the claimants are the sufferer, as such, appellant is directed to deposit a sum of Rs.2,00,000/- before the Executing Court within a period of 60 days from today. If the aforesaid amount is deposited within 60 days from today the Executing Court shall not proceed further in Execution Case No.27 of 2018 till pendency of the Miscellaneous Appeal. The Executing Court is directed to issue notice and after due verification of the claimants disburse Rs.2,00,000/- in favour of the claimants. Any payment made by the owner/appellant shall be subject to result of the present Miscellaneous Appeal.

Let the case be listed after Chhatt Puja Vacation.

Let Lower Court Records be called for.

(Kailash Prasad Deo, J.)