

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.17 of 2005

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The Oriental Insurance Company Ltd. represented through Sri Lala Malay Kumar,
Assistant Manager, and constituted attorney of the Oriental Insurance Co. Ltd.
Regional Office at Pirmuhani, P.S. Gandhi Maidan, District- Patna.

.... Appellant/s

Versus

1. Shanti Devi, wife of late Deo Nandan Mishra
2. Munni Kumari, minor
3. Manoj Kumar, minor
4. Saroj Mishra, minor
all minor sons and daughter of Deo Nandan Mishra are under the guardianship of
their mother natural guardian.
All resident of village Silout, P.S. –Maniyari, District- Muzaffarpur.
.....claimants..... respondent 1st set
5. Ram Sharam Rai, son of Radha Rai, resident of Village – MOhammadpur
Buzurg, P.S.- Maniyari, District –Muzaffarpur.
.... owner of vehicle bearing registration no.BRF-6852..... opposite party no.1
6. Shankar Rai, son of Satya Narain Rai, resident of Village Kuleshara, P.S.-
Maniari, District-Muzaffarpur
... Driver of vehicle bearing registration No. BRF – 6852
.... Opposite parties respondent 2nd Set

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 10-02-2015

This Appeal has been placed under the heading “For
Orders (On Office Notes)”.

2. Heard Mr. Ashok Priyadarshi, learned counsel
representing the appellant.

3. This is an Appeal preferred against Judgment and
Award dated 09.09.2004 and 22.09.2004 respectively in Claim
Case No. 153 of 1998 passed by 1st Additional Motor Vehicle
Accident Claim Tribunal, Muzaffarpur wherein the Claim Tribunal
has directed the appellant to pay Rs.1,67,000/- as compensation

against death of one Deo Nandan Mishra, who died on 27.05.1992 in a road accident.

4. Peculiar circumstances has arisen in this Appeal, which sands dismissed for non-prosecution with respect to minor respondents no. 2 to 4, who were before the Court below as claimants under guardianship of their mother respondent no.1 but unfortunately in the appeal powers on her behalf appears filed but only in personal capacity not as guardian of the minor respondents (children). Remaining two respondents are owner and driver of the offending vehicle.

5. Altogether four claim cases were preferred by different claimants being Claim Case Nos. 152, 153, 154 and 155 of 1998, giving rise to four appeals being M.A. Nos. 16, 17, 18 and 19 of 2005. All the appeals were heard together but somehow or the other, were separated from each other and one MA. No. 18 of 2005 arising out of Judgment and Award respectively dated 09.09.2004 and 22.09.2004 passed in Claim Case No. 154 of 1998 was decided and subsequently M.A. Nos. 19 and 16 of 2005 have also been disposed of by Judgment dated 3rd of this month on the same terms and conditions as of in earlier decision.

6. Now the office has questioned whether in the same terms present appeal shall be treated dismissed as a whole but under law it cannot be.

6. As is evident and pointed out by learned counsel for the appellant that after appearance of respondent no.1, vide order dated 11th April 2007, peremptory order was given to take steps for notice upon respondent nos. 2 to 6 which apparently could not be done causing dismissal of the appeal for non-prosecution against those respondents giving rise to MJC No.1842 of 2007 seeking recall of the order and restoration of the present appeal that too got dismissed in view of peremptory order dated 7th January 2013.

7. Under such circumstances, it is rightly contended that the Insurer appellant may pay the amount of Award to the claimants at its own risk and, thereafter, in view of the orders passed in connecting appeals, if so wishes, may initiate proceedings for recovery of the amount, so paid.

8. Finding substance in the submission, the Appeal stands disposed of in the terms as indicated above.

9. Appellant is directed to satisfy the award within a month from today and as indicated do further needful in accordance with law.

(Akhilesh Chandra, J)

Ashwini/-

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