

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.9 of 2012

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Vijay Kumar @ Vijay Pd. S/O Late Bindeshwar Singh R/O Village - Gorapur, P.S.
Warsaliganj, District - Nawada

.... Appellant/s

Versus

1. Champa Devi, W/O Late Shivnandan Chauhan, R/O Village - Gorapur, P.S.
Warsliganj, District - Nawada

claimant - applicantrespondent 1st set

2. Ranjit Pd., S/O Surendra Pd., R/O Village - Gorapur, P.S. Warsliganj, District
- Nawada

.....respondent – 2nd set

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Appearance :

For the Appellant/s : Mr. Bal Mukund Prasad Singh, Advocate
 Mr. Pratik Kumar Sinha, Advocate
 Mr. Vikash Kumar, Advocate

For the Respondent/s : Mr. Bishwa Ranjan Chaoudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 10-03-2015

Heard.

2. This is an Appeal preferred against ex parte judgment dated 23rd May 2011 in M.V. Case No.7 of 2003 passed by 2nd Additional District and Sessions Judge – cum – MACT, Nawada awarding a sum of Rs.4,15,000/- with interest @ 8 % per annum from the date of order.

3. The claimant respondent has preferred the claim against death of one Shivnandan Chauhan taking place on 30.06.2002 due to rash and negligence driving of Ranjit Prasad (respondent no.2) driver of the tractor owned by the appellant Vijay Kumar for which Warsiliganj P.S. Case No.98 of 2001 was

instituted at the instance of Chaukidar 3/6 Manoj Kumar, who has narrated the manner of accident in exhibit -1, the First Information Report. Police after investigation submitted final report which is exhibited as exhibit-2. The vehicle, in question, appears not insured by either of the insurance company.

4. The records of the claim Tribunal below show that initially in spite of service of summons the appellant defendant avoided appearance. However, when on being satisfied of service of notice vide order dated 8th December 2005, the appeal was decided ex parte. The appellant entered into appearance on 19th January 2006 and prayed to recall earlier order decided to proceed ex parte. Immediately, on hearing, the prayer was allowed, subject to payment of cost of Rs.100/- (one hundred only) but in stead of making any payment as ordered written statement appears filed on 13th April 2006 which was not accepted and several adjournments were given to make payment of cost but owing to avoiding tendency under compelling circumstances on 20th September 2006 the Court directed payment of cost of Rs.1,000/- (one thousand only) to permit the defendant appellant to contest but nothing could be done. Ultimately, on 4th May 2007, court again decided to proceed ex parte and applicant was directed to adduce evidence. While



witnesses were examined again on 13th July 2007, a petition was filed under Order 9 Rule 7 and Section 151 Code of Civil Procedure on behalf of the defendant appellant which vide order dated 1st February 2008 was rejected on the ground mentioned giving rise to Civil Revision No.154 of 2008. But the said civil revision was initially dismissed for non-prosecution and, subsequently, on merit also. Meanwhile, as contended by learned counsel for the defendant appellant there was an order of stay of further proceeding of the court below but at the same time there is nothing to indicate that such order was ever communicated or the defendant appellant made any attempt to make the court aware of such order staying further proceeding but order dismissing the civil revision, of course, appears communicated. The claim Tribunal below on the basis of materials available on record allowed the claim application ex parte giving rise to the present Appeal. That too appears preferred much after the prescribed period for limitation. No doubt, separate application seeking condonation of delay has already been filed. The delay is condoned and learned counsels are heard at length.

5. The facts and circumstances indicated above showing complete disrespect of Court's order disentitling the appellant for any benefit against proceeding and decision ex parte



by the Court below. However, learned counsel for the appellant was given an opportunity to apprise the Court, if there is anything on the record disentitling the claimant respondent from the award. But nothing could be traced out from the evidence of three witnesses. AW-1 Champa Devi, AW- 2 Raj Kumar Chauhan an eye witness to the occurrence and AW-3 Ram Bilash Chauhan brother-in-law of the deceased. That apart the claimant has produced following documents:

"1. Ext. 1- C. C. of F.I.R. of Warisaliganj P.S. Case No. 98 of 2001.

2. Ext. 2- C.C. of chargesheet.

3. Ext. 3 - Photo copy of P.M. report of deceased.

4. Ext. 4 - Photo copy of certificate of registration of offending tractor.

5. Ext. 5 - Photo copy of receipt regarding receiving of vehicle from police.

6. Ext. 6 - Photo copy of affidavit.

7. Ext. 7 - Photo copy of form 28, form of application of objection certificate and grant objection."

6. Learned counsel appearing on behalf of the appellant by placing reliance upon the decisions of the Apex Court in the case of *the Secretary, Department of Horticulture, Chandigarh and Anr. Vs. Raghu Raj* reported in 2008 AIR SCW

7630 and in the case of *Institute of Chartered Accountants of India Vs. L. K. Ratna and Ors.* reported in (1986)4 SCC 537 tried his level best to impress upon this Court that in fact the appellant has suffered due to laches on the part of the learned counsels representing his interest at all level. But such submissions are not at all acceptable. Specially in absence of any details of alleged misconduct including the details of persons concerned there appears no reason to interfere with the findings of the claim Tribunal below except directing payment of interest from the date of order whereas it ought to have been from the date of application since there appears no delay and laches on the part of claimant respondent.

7. In view of the above with only modification in the Award as to the interest to be accrued from the date of filing of the application finding no merit in this Appeal is hereby dismissed.

8. The appellant is directed to satisfy the Award within a month from today, failing which the entire amount with interest as ordered shall be realized as public debt from the person and property of the appellant.

(Akhilesh Chandra, J)

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