

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.85 of 2013

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1. THE DIVISIONAL MANAGER, DIVISIONAL OFFICE, MUZAFFAPUR REPRESENTED THROUGH ITS CHIEF REGIONAL MANAGER AND ITS CONSTITUTED ATTORNEY, REGIONAL OFFICER, NATIONAL INSURANCE CO. LTD. 4TH FLOOR, SONE BHAWAN, BIRCHAND PATEL MARG, P.S. SACHIVALAYA, DISTRICT PATNA.

O.P. No.2/ Appellant/s

Versus

1. SUNAINA DEVI, W/O LATE SHIV DAYAL SAH RESIDENT OF VILLAGE + P.O. RADHI, P.S. JALE, DISTRICT DARBHANGA, PRESENTLY C/O SRI LAL PRASAD A.E. BALUGHAT ROAD, NO. 3, P. S. AND DISTRICT MUZAFFARPUR.

2. LAL BABU SAH, S/O LATE SHIV DAYAL SAH RESIDENT OF VILLAGE + P.O. RADHI, P.S. JALE, DISTRICT DARBHANGA, PRESENTLY C/O SRI LAL PRASAD A.E. BALUGHAT ROAD, NO. 3, P. S. AND DISTRICT MUZAFFARPUR.

3. RAJESH KUMAR SAH, S/O LATE SHIV DAYAL SAH RESIDENT OF VILLAGE + P.O. RADHI, P.S. JALE, DISTRICT DARBHANGA, PRESENTLY C/O SRI LAL PRASAD A.E. BALUGHAT ROAD, NO. 3, P. S. AND DISTRICT MUZAFFARPUR.

Claimant/ Respondent 1st Set

4. VIDISHA SHAHI, D/O LATE HEMANT SHAHI, RESIDENT OF BORING ROAD, NEAR A. N. COLLEGE, S. K. PURI, PATNA.

O.P. No.1/ RESPONDENT/S 2nd Set

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Appearance :

For the Appellant/s : Mr. Raj Kumar Singh Vikram-Advocate

For the Respondent/s : Mr. Rajesh Kumar-Advocate

Mr. Dhananjay Kumar-Advocate for Claimant

Mr. Randhir Kr. Singh-Advocate

Mr. Sanjay Kumar Pandey-Advocate for Owner

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 7-04-2016

With the consent of the parties, the matter is being disposed of at the admission stage itself.

2. National Insurance Company Limited is the appellant, who has questioned the proprietary, legality, validity of the judgment/ order dated 26.04.2012 and award dated 09.05.2012 passed by the Additional Motor Vehicle Accident Claim Tribunal, Fast Track Court No.II, Muzaffarpur in Claim Case No.44 of 2010 whereby and



whereunder a sum of Rs.14,64,472/- has been identified as a claim amount which the appellant/ opposite party has been directed to pay coupled with interest at a rate of 9% per month from the date of filing of claim petition till the date of final payment, which was directed to be paid within 60 days. Furthermore, an amount of Rs.50,000/- paid as an interim compensation in tune of Section 140 of the M.V. Act directed to be deducted there from.

3. The case as being unfolded by the respondents/ claimants, who happen to be wife and sons of deceased Late Shiv Dayal Sah that deceased Shiv Dayal Sah was Peon (Anusewak), Animal Husbandry Department at Pashuchikitshalya, Godhela Patauri P.S. Bishanpur, District-Darbhangha, who, on 23.02.2010 at about 4.00 p.m. was returning home from his workplace over bicycle and as soon as reached near Teliya Pokhar, N.H.57, P.S. Simiri, District-Darbhangha, a bus bearing registration No.B.R-06P-1540, which was being rashly and negligently driven by its driver, dashed against Shiv Dayal Sah from behind on account of which he died at the spot. Simiri P. S. Case No.15 of 2010 was registered under Section 304A, 279 I.P.C. Post mortem was conducted over the dead body and was later on handed over to the claimant.

4. It has also been averred that Vidisha Shahi happens to be the owner of the vehicle and further, the vehicle stood insured

under National Insurance Company Limited, Buni Bazar, Muzaffarpur valid from 18.12.2009 to 17.12.2010. The claimant also claimed Rs.16,34,000/- as claim amount under different heads as detailed.

5. It is evident from the claim petition that driver has not been impleaded as party. It is also evident from the lower court record as well as from the judgment impugned that owner had not appeared and on account thereof, the proceeding sailed against her in ex parte manner. It is also evident from the order sheet that after examination of all the witnesses, the prayer of the appellant/ opposite party no.2 under Section 170 of the M. V. Act was allowed vide order dated 21.03.2012.

6. Appellant/ opposite party no.2 filed written statement wherein apart from raising an ornamental objection, it has also been pleaded that amount of compensation so claimed for, happens to be exorbitant one having not at all substantiated. In likewise manner, it has also been pleaded that owner be directed to produce route permit, tax token, driving licence, fitness certificate and unless and until, same is being filed, no liability could be fastened against the Insurance Company.

7. Furthermore, it has also been pleaded that claimant happens to be under obligation to prove that vehicle bearing registration No.BR-06P-1540 was being rashly and negligently driven

by the driver, who was possessing valid driving license. In absence thereof, on account of breach of policy, the insurer cannot be held responsible to indemnify the owner.

8. Therefore, from the written statement, it is apparent that non-joinder of driver as a party has not been raised. The same has been raised at the present moment for the first time and so, its admissibility as well as impact have become prosodial.

9. The learned Tribunal on the pleading of the respective parties framed following issues:-

“(1) Is the claim case as framed maintainable?”

(2) Whether the accident in question took place due to rash and negligent driving of the driver of the vehicle No.BR06P-1540 on 23.2.2010 at 4 P.M. at near Teliya Pokhar, N. H. 57, P.S. Simiri, District-Darbhangha?

(3) Whether deceased Shiv Dayal Sah S/o Late Ganga Sah died in this accident which arises out of Simiri P. S. Case No.15 of 2010 U/Ss 279, 304A I.P.C.?

(4) Was the driver of the Shahi Tripauti bus possessing valid licence at the time of alleged accident?

(5) Are the applicants entitled to the claim

propounded if so what would be the quantum of compensation and from whom?

(6) Are the Claimants entitled to award or awards as prayed for?"

And decided the same in a manner as indicated above whereupon instant appeal has been filed.

10. It has been submitted on behalf of appellant that as, before the learned lower Court, a prayer under Section 170 of the M. V. Act is found allowed on account thereof, appellant is entitled to challenge the judgment and award impugned in its entirety because of the fact that the appellant substituted the owner. Therefore, apart from raising objection in terms of statutory one under Section 149(2) of the M. V. Act., the grounds available to the owner should also be availed by the appellant.

11. Learned counsel for the appellant submitted that judgment and award impugned happens to be bad in law on account of non-joinder of necessary party. To substantiate the same, it has been submitted that actually the driver is the person at whose fault the deceased had met with an accident. As driver was employed by the owner of the vehicle on account thereof, owner is found vicariously liable and to that extent, as per terms of policy, appellant happens to be. Therefore, unless and until, the driver is properly identified and pleaded and further, only after his appearance it could have been



known whether he was possessing valid driving license or not as, in case of absence of valid driving licence or fake licence or validity of the licence having been expired or having no driving licence will certainly exonerate the appellant in terms of defence available, so prescribed under Section 149(2) of the M. V. Act under the garb of breach in terms of the policy. Hence, presence of driver is necessary and on account thereof, instant proceeding happens to be bad for non-joinder of the necessary party.

12. It has further been submitted that the learned Tribunal had not considered the evidence of the witnesses in its right perspective and similar way, had not assigned any cogent reason in granting such huge amount in lieu of compensation.

13. And lastly, it has also been pleaded that taking into account the conduct of the owner by keeping herself away from the proceeding, an opportunity be given to the appellant to recover the amount from the owner. To substantiate the such plea, it has been submitted that for want of presence of owner, the actual affair relating to the status of the driver coupled with whether the driver was at the relevant time was possessing valid driving licence not been allowed to surface which, having presence, in that event, it would have been known whether there was any kind of violation relating to terms and conditions of the policy. The learned counsel also referred *Appeal*

(Civil) 5825 of 2006 The Oriental Insurance Company Limited v. Meena Variyal and others.

14. At the other end, the learned counsel for the respondents/ claimants have submitted that whatever grounds have been raised in order to challenge the judgment and award impugned are not acceptable in the eye of law. It has also been submitted that learned Tribunal had taken much pain in deciding each and every aspect, so raised on behalf of respective parties and further, granted reasonable amount as compensation considering all material aspects. Hence, did not attract interference.

15. It has also been submitted that basically neither factual nor legal point has been raised on behalf of appellant, which could have adverse impact over the judgment and award impugned in the background of either non-consideration or being over looked. Furthermore, it has also been submitted that though driver has not been pleaded as his whereabouts was not known and further, on account of non-appearance of the owner, claimant could not get opportunity to have proper information. Apart from this, as has been submitted driver is not a necessary party whereupon non-impleading of party is not going to jeopardize the interest of the claimant.

16. It has also been submitted that with regard to prayer of the appellant/ opposite party no.2 that he be allowed to recover the

amount from the owner, the claimant had nothing to say. Also relied upon *A.I.R. 1979 Patna 204, 2002 (2) TAC 503, 1995(2) TAC 638, 2008 ACJ 838.*

17. In a Claim Petition though there happens to be departure from strict compliance of ingredients of the Evidence Act, even then, both the parties should be in a position to substantiate their case. The claimant, accordingly, is found under obligation to substantiate death/ injury of the injured in a motor vehicle accident and in likewise manner, to justify the quantum of compensation as sought for. In likewise manner, the opposite parties are expected to substantiate, if he happens to be the owner, either to refute the claim of the claimant contrary to it, to be paid by the insurer being the vehicle insured and insurer to prove that there happens to be breach of policy whereupon it cannot be held liable. If there happens to be absence of owner, then in that event, apart from exercising as well as availing the grounds so available with the owner in terms of Section 170 of the M.V. Act, is also found entitled for raising an objection in terms of Section 149(2) of the M. V. Act.

18. The aforesaid view is found duly endorsed in a three Judges Bench decision in *National Insurance Company Limited v. Swaran Singh and others* reported in (2004)3 SCC 297 wherein after taking into account earlier judgments, it has been held:-



“48. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147(3) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

49. Such a breach on the part of the insurer

must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach.

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66. A bare perusal of the provisions of Section 149 of the Act leads to only one conclusion that usual rule is that once the assured proved that the accident is covered by the compulsory insurance clause, it is for the insurer to prove that it comes within an exception.

67. In MacGillivray on Insurance Law it is stated:

"25-82 Burdens Of Proof: Difficulties may arise in connection with the burden of proving that the facts of any particular case fall within this exception. The usual rule is that once the assured has proved that the case comes within the general risk, it is for the insurers to prove that it comes within an exception. It has therefore been suggested in some American decisions that, where the insurers prove only that the assured exposed himself to danger and there is no evidence to show why he did so, they



cannot succeed, because they have not proved that his behaviour was voluntary or that the danger was unnecessary. Since an extremely heavy burden is imposed on the insurers if they have to prove the state of mind of the assured, it has been suggested in Canadian decisions that the court should presume that the assured acted voluntarily and that, where he does an apparently dangerous and foolish act, such danger was unnecessary, until the contrary is shown. In practical terms, therefore, the onus does in fact lie on the claimant to explain the conduct of the assured where there is not apparent reason for exposing himself to an obvious danger."

68. In Rukmani and Others vs. New India Assurance Co. Ltd. and Others [1999 ACJ 171], this Court while upholding the defences available to the insurer to the effect that vehicle in question was not being driven by a person holding a licence, held that the burden of the insurer would not be discharged when the evidence which was brought on record was that the Inspector of Police in his examination in chief merely stated,

"My enquiry revealed that the respondent

No.1 did not produce the licence to drive the abovesaid scooter. The respondent No.1 even after my demand did not submit the licence since he was not having it." (SCC p. 161, para 3)

69. The proposition of law is no longer res integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event, the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability. (See Sohan Lal Passi (supra).

70. Apart from the above, we do not intend to lay down anything further i.e. degree of proof which would satisfy the aforementioned requirement inasmuch as the same would indisputably depend upon the facts and circumstances of each case. It will also depend upon the terms of contract of insurance. Each case may pose different problem which must be resolved having to a large number of factors governing the case including conduct of parties as regard duty to inform, correct disclosure,



suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the owner of the vehicle and the circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hard and fast rule can therefor be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of contract of insurance on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt, must arrive at a finding on the basis of the materials available on records.

71. In the aforementioned backdrop, the provisions of sub-sections (4) and (5) of Section 149 of the Motor Vehicles Act, 1988 may be considered as the liability of the Insurer to satisfy the decree at the first instance.”

19. Under the arena of settled principle as discussed above, from the respective pleadings, it is apparent that death of deceased Shiv Dayal Sao aged about 50 years in a motor vehicle accident has not been denied at the end of the appellant. Furthermore,



to substantiate the same, during course of trial, four witnesses have been examined on behalf of claimants out of whom, AW-1, Sunaina Devi (wife) one of the applicants, AW-2 Pramod Prasad, an eye witness, has not been cross-examined over accident, AW-3 Rajesh Kumar Shah, son of deceased and AW-4 Munna Mandal, an eye witness also not been challenged on the score of accident. Therefore, death on account of motor vehicle accident is out of controversy. The first information report of Simiri P. S. Case No.15 of 2010 (Exhibit-2) along with chargesheet (Exhibit-3), post mortem report (Exhibit-4) respectively corroborated the same.

20. Now, coming to the score of quantum of compensation, it is evident from Exhibit-1, pay slip deceased had last drawn, the salary appertains to Rs.15,003/-. From the claim petition, it is evident that age of the deceased has been disclosed as 50 years, no service book has been brought up on record to substantiate the age of the deceased. Furthermore, from the oral evidence, it is evident that none of the witnesses had disclosed the age of the deceased. Contrary to it, the age of the deceased has been estimated to be 48 years as per post mortem report (Exhibit-4) and the same has not been questioned, at the end of the appellant. Therefore, be it 50 years or 48 years, the learned Tribunal had applied multiplier of 13 after deducting the H.R.A. as well as W.A.



21. Now, coming to the score of non-pleading of the driver and further, its repercussion. Though, the format so prescribed under Bihar Motor Vehicles Rule, contains presence of driver, but neither in the act nor in the rule as referred above, commands the situation disregarding the claim petition on account of such lapses which happens to be correct in the background of the fact that after all, driver is being employed by the owner and on account thereof, any overt act or omission committed by the driver during course of employment is to be shared by the employer the owner and for that, though actual presence of owner at the site is not found necessary as his presence under the banner of vicarious liability is found as being master and further, fault has been committed by his servant during course of his employment.

22. Plying of a motor vehicle on the road is always identifiable by the presence of owner as well as driver. Owner as defined in M. V. Act is the person in whose name registration stands having control over the vehicle and driver being employed at his end to ply the vehicle. Therefore, there happens to be conjoint liability whenever question arose and under law of Tort known as Tort Feasor, because of the fact that driver is employed by the owner on account thereof, owner is the person to be held responsible with regard to act or omission a driver having been employed by him and so, driver has

got no such importance than that of owner. Be that as it may, when there happens to be the theme of Tort Feasor either both of them or one of them could be impleaded as a party as has been held in three Judges Bench in ***Khenyei v. New India Assurance Company Limited and others reported in A.I.R. 2015 SC 2261***, it has been held:-

“6. In *Law of Torts* by Winfield and Jolowicz, 17th Edn., 2006, the author has referred to *Performance Cars Ltd. v. Abraham* [1962 (1) QB 33], *Baker v. Willoughby* 1970 A.C. 467, *Rogers on Unification of Tort Law: Multiple Tortfeasors*; *G.N.E.R. v. Hart* [2003] EWHC 2450 (QB), *Mortgage Express Ltd. v. Bowerman & Partners* 1996 (2) All E.R. 836 etc. and observed thus :

“WHERE two or more people by their independent breaches of duty to the claimant cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the claimant to suffer a single, indivisible injury the position is more complicated. The law in such a case is that the claimant is entitled to sue all or any of them



for the full amount of his loss, and each is said to be jointly and severally liable for it. If the claimant sues defendant A but not B and C, it is open to A to seek “contribution” from B and C in respect of their relative responsibility but this is a matter among A, B and C and does not affect the claimant. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It may be greatly to the claimant’s advantage to show that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. Even where all participants are solvent, a system which enabled the claimant to sue each one only for a proportionate part of the damage would require him to launch multiple proceedings, some of which might involve complex issues of liability, causation and proof. As the law now stands, the claimant may simply



launch proceedings against the “easiest target”. The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role. Thus a solicitor may be liable in full for failing to point out to his client that there is reason to believe that a valuation on which the client proposes to lend is suspect, the valuer being insolvent; and an auditor will be likely to carry sole responsibility for negligent failure to discover fraud during a company audit. A sustained campaign against the rule of joint and several liability has been mounted in this country by certain professional bodies, who have argued instead for a regime of “proportionate liability” whereby, as against the claimant, and not merely among defendants as a group, each defendant would bear only his share of the liability. While it has not been suggested here that such a change should be extended to personal injury claims, this has occurred in some American jurisdictions, whether by statute or by judicial decision. However, an

investigation of the issue by the Law Commission on behalf of the Dept of trade and Industry in 1996 led to the conclusion that the present law was preferable to the various forms of proportionate liability.”

7. Pollock in Law of Torts, 15th Edn. has discussed the concept of composite negligence. The relevant portion at page 361 is extracted below :

“Another kind of question arises where a person is injured without any fault of his own, but by the combined effects of the negligence of two persons of whom the one is not responsible for the other. It has been supposed that A could avail himself, as against Z who has been injured without any want of due care on his own part, of the so-called contributory negligence of a third person B. It is true you were injured by my negligence, but it would not have happened if B had not been negligent also, therefore, you can not sue me, or at all events not apart from B. Recent authority is decidedly against allowing such a defence, and in one particular class of cases it has been emphatically disallowed. It must, however, be open to A to answer to Z: You



were not injured by my negligence at all, but only and wholly by B's. It seems to be a question of fact rather than of law (as, within the usual limits of a jury's discretion, the question of proximate cause is in all ordinary cases) what respective degrees of connection, in kind and degree, between the damage suffered by Z and the independent negligent conduct of A and B will make it proper to say that Z was injured by the negligence of A alone, or of B alone, or of both A and B,. But if this last conclusion be arrived at, it is now quite clear that Z can sue both A and B.

At page 362 Author has observed as :-

"The strict analysis of the proximate or immediate cause of the event: the inquiry who could last have prevented the mischief by the exercise of due care, is relevant only where the defendant says that the plaintiff suffered by his own negligence. Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled- of course, within the limits set by

the general rules as to remoteness of damage- to sue all or any of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he can not recover in the whole more than his whole damage."

8. *In Palghat Coimbatore Transport Co. Ltd. v. Narayanan, [ILR (1939) Mad. 306], it has been held that where injury is caused by the wrongful act of two parties, the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damage, the plaintiff is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage. He has a right to recover the full amount of damages from any of the defendants.*

9. *In National Insurance Co. Ltd. v. P.A. Vergis & Ors. [1991 (1) ACC 226], it has been observed that the case of composite negligence*



is one when accident occurs and resulting injuries and damages flow without any negligence on the part of the claimant but as a result of the negligence on the part of two or more persons. In such a case, the Tribunal should pass a composite decree against owners of both vehicles. In *United India Fire & Genl. Ins. Co. Ltd. v. Varghese & Ors.* [1989 2 ACC 483 = 1989 ACJ 472], it has been observed that in a case of composite negligence, the injured has option to proceed against all or any of the joint tortfeasors. Therefore, the insurer cannot take a defence that action is not sustainable as the other joint tortfeasors have not been made parties. Similar is the view taken in *United India Fire & General Insurance Co. Ltd. v. U.E. Prasad & Ors.* [AIR 1985 Kar. 160]. In *Andhra Marine Exports (P) Ltd. & Anr. v. P. Radhakrishnan & Ors.* [AIR 1984 Mad. 358], it has been held that every wrong doer is liable for whole damages in the case of composite negligence if it is otherwise made out.

Similar is the view taken in *Smt. Kundan Bala Vora & Anr. v. State of U.P.* [AIR 1983 All. 409], where a collision between bus and

car took place. Negligence of both the drivers was found. It was held that they would be jointly and severally liable to pay the whole damages. In Narain Devi & Ors. v. Swaran Singh & Ors. [1989 2 ACC 116 (Del.) = 1989 ACJ 1118] there was a case of composite negligence by drivers of two trucks involved in an accident which hit the tempo from two sides. The proportion in which the two vehicles misconducted or offended was not decided. It was held by the High Court that the Tribunal was right in holding the liability of tortfeasors as joint and several.”

23. This point should be seen through another angle also.

In terms of Section 170 of the M. V. Act, appellant/ opposite party no.2 substituted the owner that means to say, the defence available to the owner has been enjoined by the Insurance Company. Then in that event, the Insurance Company should not plead contrary to its status being owner that means to say, deployment of driver having no valid driving licence and in likewise manner, the relevant document required for plying the vehicle and under such situation after conjoint reading of Section 170 as well as 149(2) of the M. V. Act, it is apparent that by invoking the privilege under Section 170 of the M. V. Act, the Insurance Company, blunt the edge of sharpness of Section

149(2) of the M. V. Act.

24. At the present moment, one more situation has to be taken note of and that is with regard to presence of owner at the appellate stage on being noticed and filed relevant documents under I. A. No.1912 of 2016 praying therein to exhibit the documents by way of additional evidence which in the facts and circumstances of the case, should not be allowed. In likewise manner, counter-affidavit has also been filed annexing those documents which cannot be looked into in the background of the fact that proceeding before the lower court sailed ex parte against owner and aforesaid finding has not yet been challenged. Hence, I. A. No.1912 of 2016 is rejected.

25. Another circumstance at the present moment so visualizing is with regard to having the appeal barred by limitation as has been filed beyond 105 days of limitation so prescribed for filing the appeal.

26. Taking into account the grounds so enumerated therein, the delay is condoned and on account thereof, I. A. No. 4272 of 2013 is allowed.

27. Giving minute observation to the materials available on the record in consonance with the pleas raised on behalf of respective parties and further, the appellant have not denied the factum of insurance as well as failed to substantiate positively as well

as conclusively, breach of condition of the policy. As a result thereof, the instant appeal lacks merit and is accordingly, dismissed. The prayer of the appellant for recovery of the amount from the owner also could not be acceded with. Appellant is directed to pay the decretal amount along with interest as inflicted by the judgment and decree impugned within two months, failing which respondent/ claimant will be at liberty to proceed with execution proceeding. In the facts and circumstances of the case, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated- 7.04.2016
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