

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.109 of 2014

IN

MA 683 of 2012

- =====
1. MANJU SRIVASTAVA @ MANJU DEVI WIFE OF LATE SURENDRA PRASAD SRIVASTAVA
 2. AMIT KUMAR SRIVASTAVA SON OF LATE SURENDRA PRASAD SRIVASTAVA
 3. RANJEET KUMAR SRIVASTAVA SON OF LATE SURENDRA PD. SRIVASTAVA
 4. SUNITA KUMARI D/O LATE SURENDRA PD. SRIVASTAVA
 5. RANI KUMARI D/O LATE SURENDRA PD. SRIVASTAVA
 6. RANJEETA KUMARI D/O LATE SURENDRA PD. SRIVASTAVA.
ALL RESIDENT OF VILLAGE - MOHAMMADPUR LALA TOLA, P.S.
MOHAMMADPUR, DISTRICT – GOPALGANJ.

.... PETITIONER/S

VERSUS

1. ORIENTAL INSURANCE COMAPNAY LTD., BRASHM CHOWK BRANCH, GOPALGANJ, DISTRICT – GOPALGANJ.
2. BASARULLAH SIDIQUE (DRIVER OF THE VEHICLE AND OPPOSITE PARTY NO. 2 IN THE CLAIM) SON OF KAMRUDDIN SIDIQUE.
BOTH RESIDENT OF NO.2 AND 3 RESIDENTS OF VILLAGE - AMARDA VIJOEPUR, P.S. BISHAMBHARPUR, DISTRICT – GOPALGANJ.

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Adv.
Mr. Shanti Kumar, Adv.

For the O.P. No.1 : Mr. Arun Kumar Shrivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 10-08-2016

Petitioners who are legal heirs of Late Surendra Kumar Srivastava, claimant filed instant petition of review relating to order dated 10.03.2014 passed in Misc. Appeal No.683 of 2012 by a coordinate bench whereby and whereunder maintaining the quantum of claim amount, reduced rate of interest from 9% to 6% per annum from the date of filing of the claim petition till final payment to the claimant.

2. In order to appreciate the lis in its right perspective, facts of the case is to be taken first.

3. Claim Petition No.27 of 2007 was filed by one Surendra Kumar Srivastava before Motor Vehicle Accident Claims Tribunal, Gopalganj on account of injuries sustained by him which he suffered being knocked down by the Marshal Jeep bearing registration no.BR-28-6590 while he along with other was travelling over a motorcycle, by impleading the relevant parties including Oriental Insurance Company Ltd. insurer of the jeep and vide judgment and decree dated 31.05.2012, the learned Additional Motor Vehicle Claims Tribunal, Gopalganj allowed the petition identifying Rs.5,98,000/- as claim amount with an interest at a rate of 9% per annum realizable from the date of filing of the petition till the date of final payment against which Misc. Appeal No.683 of 2012 has been filed by the insurance company namely Oriental Insurance Company Ltd. During course thereof, notices were directed to be issued against the respondent on account of which notices were issued and as per execution report relating to Surendra Kumar Srivastava, claimant/respondent no.1, the same happens to be dated 15.06.2013 which speaks that process server met with Surendra Kumar Srivastava who refuse to entertain the notice after going through the same as well as to endorse his signature with regard thereto. On account thereof, the notice has been hanged over his building wherein his family members reside whereupon execution was accepted. Vide order dated 10.03.2014 Misc. Appeal No.683 of 2012 was decided in a manner as disclosed above whereupon petitioners have filed instant

review petition.

4. From the record, it is evident that instant petition has been filed on 01.04.2014 at the end of legal heirs of late Surendra Kumar Srivastava, claimant/respondent no.1 and further they prayed for permission to file the review petition which was allowed vide order dated 07.10.2015.

5. Sole ground over which instant review petition has been filed is with regard to sanctity of the execution report in Misc. Appeal No.683 of 2012. It has been submitted that execution report dated 25.06.2013 wherein the process server had mentioned the fact that he met with respondent no.1/claimant Surendra Kumar Srivastava happens to be absolutely false, incorrect as Surendra Kumar Srivastava had died much before 25.06.2013, that means to say on 24.06.2012 at Military Hospital, Lucknow and to substantiate the same, death certificate issued by the concerned Military Hospital has been filed (Annexure-2), so submitted that it is fit case wherein review could be allowed.

6. At the other end, learned counsel for the Oriental Insurance Company Ltd. opposed the prayer and submitted that review is not at all permissible on such flimsy ground and to substantiate the same, learned counsel relied upon Union of India & Ors. Vs. Smt. Meena Devi, order dated 02.07.2014 passed in CWJC No.10658 of 2013, more particularly para-16 thereof. So submitted that instant petition is fit to be rejected.

7. Appeal under the Motor Vehicle Claims Tribunal is to be filed in terms of Section 173 of the MV Act. It is evident that for the



purpose of guiding the procedure of claim petition filed before the tribunal, specific procedure has been laid down under Section 169 of the M.V. Act while no procedure has been prescribed with regard to conduction of appeal. However, Bihar Motor Vehicle Rules, 1992 does contain the procedure to be followed up while entertaining an appeal and for better appreciation of the same Rule-249 is quoted below:

“249. Manner of appeals. – (1) Every appeal against the Claims Tribunal shall be preferred in the form of a memorandum signed by the appellant or an advocate or attorney of the High Court duly authorized in that behalf by the applicant and presented to the High Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the award.

(2) The memorandum shall set forth concisely and under distinct heads the grounds of objection to the award against which the appeal is preferred without any argument or narrative and such grounds shall be numbered consecutively.

(3) Save as provided in sub-rules (1) and (2), the provisions of Order XLI and Order XXI in First Schedule to the Code of Civil Procedure, 1908 (V) of 1908) shall mutatis mutandis apply to appeals preferred to the High Court under Section 173”

8. In *U.P.S.R.T.C. Vs. Km. Mamta & Ors. & Ors.* reported in *2016 (1) BBCJ 610 (SC)*, the Hon'ble Apex Court has held that the procedure of CPC is to be followed up and the relevant para is quoted below:

“24. An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See **National Insurance Company Ltd. Vs. Naresh Kumar & Ors. ((2000) 10 SCC 198 and State of Punjab & Anr. Vs. Navdeep Kuur & Ors. (2004) 13 SCC 680]**. ”

9. Now coming to Order-XLI of the CPC, which governs the proceeding of the appeal, it is evident that as per Rule-17(2) of the CPC gives a liberty to have hearing of the appeal in ex-parte manner in case there happens to be absence of respondent. In terms of Order-XLI Rule-21 of the CPC, on sufficient reasoning so assigned at the end of the respondent and perceived by the court that the notice was not duly served or that the respondent was prevented by sufficient cause from appearing, the appeal may be reheard.

10. In the aforesaid background, when there happens to be specific provision for having the presence of respondent duly

acknowledged as well as by having revival of the appeal, there happens to be no question of review. Review is permissible when there happens to be presence of both the parties and after hearing rival parties matter is being decided but, in the present case there was absence of respondent no.1/claimant Surendra Kumar Srivastava and for that a reasonable explanation has been offered, on account thereof, petitioners are to proceed in terms of Order-XLI Rule-21 of the CPC. Therefore, instant petition is found devoid of merit and is accordingly, rejected.

11. However, in the facts and circumstances of the case, in case petitioners file petition under Order-XLI Rule-21 of the CPC within four weeks from the date of order, then in that event, question of limitation would not survive.

(Aditya Kumar Trivedi, J.)

PN/-

AFR/NAFR	AFR
CAV DATE	27-07-2016
Uploading Date	12-08-2016
Transmission Date	N.A.