

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Jurisdiction Case No.5706 of 2013**

**IN**

**MA 340 of 2012**

ICICI Lombard General Insurance Company Limited, Chowranghee Road, Kolkata through Legal Manager, Vishal Kumar Srivastava, Son of Sri Umesh Chandra Srivastava, Regional Office, Eldico Corporate Chamber-1, 4<sup>th</sup> Floor, Vibhuti Kund, Gomti Nagar, Lucknow

.... .... Petitioner

Versus

1. Subdhi Devi, W/O Lutan Yadav
2. Lutan Yadav, S/O Sundar Yadav

Both are residing at Village Bishwanathpur Fardaha, P.S. Bahera, District Darbhanga

3. Dev Narayan Yadav, S/O Late Prit Yadav, (Owner of Commander Jeep No. BR-7P-0816)
4. Lalit Mandal, S/O Late Kameshwar Mandal (Driver of Commander Jeep No. BR-7P-0816),

Both are residents of Village Paunta, P.O. Sonki, P.S. Sadar Darbhanga, District Darbhanga

5. The Chairman/Managing Director, ICICI Lombard General Insurance Company Limited, Zenth House, Keshavrao Khadya Marg, Opposite Race Course, Maha Laxmi, Mumbai-400034

.... .... Respondents

**Appearance :**

For the Petitioner : Mr. Rajesh Ranjan, Advocate

For the Respondents : Mr.

**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 05-10-2016**

Heard Mr. Rajesh Ranjan, learned counsel for the petitioner.

This application has been filed for restoration of Miscellaneous Appeal No. 340 of 2012 which stands dismissed in so far as it relates to respondent nos. 3 and 4 for non-compliance of the peremptory order dated 29.08.2013. By the said order, this Bench had directed the appellant to take steps for filing a jointness application of



the respondent no. 3 with his cousin brother who had received notice on his behalf as well as to take appropriate steps in so far as respondent no. 4 is concerned, who had since deceased. Since steps were not taken hence, the Miscellaneous Appeal stood dismissed against the respondent no. 3 and 4 and although the office has also reported its dismissal as against respondent no. 5 but that is the not the correct position since no notice was issued either to the respondent no. 4 or respondent no. 5.

Mr. Rajesh Ranjan, learned counsel appearing for the petitioner has submitted that whereas a jointness application of the respondent no. 3 with his cousin was subsequently filed on 14.11.2013 but in absence of the whereabouts of the heirs of the respondent no. 4, no substitution application was filed, however since the order of the Motor Vehicle Claims Tribunal, Darbhanga impugned herein does not bind the respondent no. 4 nor casts any obligation as to discharge of any liability, hence, he may be permitted to delete the name of the respondent no. 4 from the memo of appeal consequent upon his death.

Having heard learned counsel for the petitioner and considering the circumstances that a jointness petition for respondent no. 3 with his cousin brother has been filed in the Miscellaneous Appeal though with some delay, the delay is condoned and the appeal

in so far as respondent no. 3 is concerned stands restored.

In so far as the respondent no. 4 is concerned, in absence of any direction issued in his regard rather considering that by order dated 29.08.2013 this Court had directed the appellant to take appropriate steps without any positive direction, the appeal could not be dismissed as against the respondent no. 4 for non-compliance of the order passed on 29.08.2013.

Since Mr. Rajesh Ranjan, learned counsel for the petitioner submits that the order in appeal does not bind the respondent no. 4 nor casts any obligation upon him, the prayer for deletion of the respondent no. 4 can be made by him before the Bench considering the appeal. In consequence of the order aforementioned, the Miscellaneous Appeal No. 340 of 2012 stands restored to its original file in so far as it relates to the respondent no. 3 to 5.

This application is allowed.

**(Jyoti Saran, J.)**

Kundan

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