

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No.1364 of 2016**

1. Ratan Sai S/o Late Bodhi Ram, Aged About 39 Years R/o Telipara, P.S. City Kotwali, Distt. Bilaspur, Chhattisgarh
2. Lalita D/o Ratan Sai, Aged About 18 Years R/o Telipara, P.S. City Kotwali, Distt. Bilaspur, Chhattisgarh(Claimants)

---- Appellants**Versus**

1. Ashok Kumar Agariya S/o Shri Sidhnath Agariya, Aged About 25 Years R/o Village Khajuriya, P.S. Madwas, Distt. Sidhi (M.P.)(Driver Of Trailer No. C.G.04 J A 1356)
2. Pawan Kumar Agrawal S/o Hansraj Agrawal, R/o Plot No.125, T P Nagar, Korba, Distt. Korba, Chhattisgarh(Owner Of Trailer No. C.G.04 J A 1356)
3. National Insurance Company Limited, Through The Divisional Manager, Vyapar Vihar Road, Bilaspur Distt. Bilaspur, Chhattisgarh(Insurer Of Trailer No. C.G.04 J A 1356)

---- Respondents

For appellant : Smt. M. Asha, Advocate
 For respondent No.3 : Shri Anil Gulati, Advocate
 None for respondent No.2 though served.
 Notice issued to respondent No.1 through usual mode returned unserved.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****14.12.2016**

Heard on IA No.02/16 filed under Order 41 Rule 14(4) of the Code of Civil Procedure for dispensing with the issuance of notice to respondents 1 & 2.

2. It is prayed on behalf of the appellants that the said application may be considered for respondent No.1 only. It is submitted on behalf of the appellants that respondent No.1 remained ex-parte during trial, hence the appellants may be permitted to dispense for issuance of notice to respondent No.1.

3. As prayed, IA No.02/16 is hereby allowed. The appellants are dispensed with service of notice to respondent No.1.

4. Also heard on Ia No.01/16 for condonation of delay in filing the appeal as the appeal has been preferred after 231 days of its limitation.

5. It is submitted on behalf of the appellants that after the sudden demise of Kousalya Bai , wife of appellant No.1 & mother of appellant No.2, they suffered with mental agony and when recovered up to some extent, they approached the counsel and filed the instant appeal, hence, the delay is bonafide, unintentional and the same may be condoned and the appeal may be heard on its merits.

6. A perusal of the copy of award dated 10.11.2015, it appears that the appellants had received the copy of the award under the provisions of Section 168(2) of the Motor Vehicles Act, and they were duly represented since the presentation of the claim case before the Tribunal on 15.12.2014 and during the award passed on 10.11.2015.

7. There is no disclosure of fact whether the appellants/claimants had received any awarded amount or not.

8. Upon consideration of the entire facts, the reasons for delay is not satisfactorily explained. After consideration of the entire facts, delay of 231 days is not satisfactorily explained, hence, the application is dismissed as not maintainable.

9. As a consequence, the appeal too is dismissed as being barred by time.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE