

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

**Miscellaneous Appeal No.779 of 2012**

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1. National Insurance Company Ltd., Branch No.4, Swastik Bhawan, Manormaganj, 9-C A.B. Road, Indore, M.P. represented through Shri Anjani Kumar, Working as A.O. and dully constituted Attorney of National Insurance Company, having its Regional Office at 4<sup>th</sup> floor, Sone Bhawan, Beer Chand Patel Path, P.S. Sachiwalaya, District-Patna.

2. National Insurance Company Ltd, Tilak Complex, Buxer, Namak Gola, Buxer represented through Shri Anjani Kumar, Working as A.O. and dully constituted Attorney of National Insurance Company, having its Regional Office at 4<sup>th</sup> floor, Sone Bhawan, Beer Chand Patel Path, P.S. Sachiwalaya, District-Patna.

.... .... Appellant/s

Versus

1. Ram Padi Devi, W/o late Ram Badan Singh.
2. Chandra Sohan Singh, S/o Late Ram Sadan Singh
3. Chandra Shekhar Singh, S/o Late Ram Badan Singh.
4. Chandra Govinda Singh, S/o Late Ram Badan Singh

All minor S/o Late Badan Singh, represented through their mother Ram Padi Devi and natural guardian. All R/o Village Fatehpur P.O. Parasbiga, P.S. Parasbiga, District-Jehanabad.

..... Claimants... Respondent 1<sup>st</sup> set.

5. Tara Singh, S/o Harbansh Singh R/o 12/10 Vijay Nagar, Indore, owner of the truck bearing its registration no. M.P.-09-KA-6754.

..... Opposite Party no. 2.

6. Badri Lal S/o Narain Lal, 139 B.T. Road, Kolkatta-15, Driver of the truck bearing its registration no. MP-09-KA-6754.

....O.P. no. 3 ..... .... Respondent 2<sup>nd</sup>

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**Appearance :**

For the Appellant/s : Mr. Shailendra Kumar

For the Respondents no. 1 to 4 : Mr. Ramakant Yadav.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**

**ORAL JUDGMENT**

**Date: 25-08-2017**

**Ref: Interlocutory Application no. 6662 of 2013**

The appellants have filed the aforesaid interlocutory application for condonation of delay of 33 days in filing the appeal on



the ground that the conducting lawyer sent his opinion along with Judgment and Award to Branch Office of the appellants at Buxar which sent the entire records to the Divisional Office and the Divisional Office in turn sent it to Regional Office with opinion to file the appeal and immediately the matter was handed over to the learned lawyer of the appellants who after preparing the Memo of Appeal has filed this appeal on reopening of the Puja holidays. Thus, there is no deliberate laches on the part of the appellants in filing the appeal. The aforesaid delay occurred due to said reasons.

It is well settled law that the justice should be done after hearing the parties and injustice should not be done by shutting down the hearing merely on technical grounds.

Considering the facts and circumstances of the case and in the interest of justice, the aforesaid delay in filing the appeal is condoned and the appeal is admitted for hearing. The aforesaid interlocutory application is allowed accordingly.

2. Heard both sides on this Miscellaneous Appeal and perused the records.

3. The appellants have filed this appeal against the Judgment dated 30.05.2012 and the Award dated 26.06.2012 passed by Additional District and Sessions Judge, F.T.C. 1<sup>st</sup> Buxer-cum-Motor Vehicle Claim Tribunal in M.V. Case no. 10 of 2004 whereby



learned Tribunal awarding final amount of compensation to the tune of Rs. 7,72,556/- along with interest @ 6% per annum from the date of filing of the claim case till recovery to the respondent nos. 1 to 4 directed the appellants to pay the same with liberty to recover the same from the owner of the offending vehicle.

4. Factual matrix of the case is that, the respondent nos. 1 to 4 had filed M.V. Case no. 10 of 2004 against the appellants and respondent nos. 5 to 6 under Section 166 MV Act for awarding compensation to the tune of Rs. 8 with the case in succinct that on 15.01.2004 at about 7:00 A.M. a jeep bearing registration no. BR-3P-0175 coming from Sonebarsa was parked on the road side on NH-30. The deceased Rambadan Singh and another woman who happens to be its commuter were stepping down from the said jeep. In the meantime, a truck bearing registration no. MP-09-KA-6754 came from the side of Ara being driven rashly and negligently by its driver and dashed the said jeep resultantly Rambadan Singh sustained head injuries and died on the spot. His daughter was also injured in the said accident. The Rambadan Singh happens to be Sub-Inspector of Police and used to draw monthly salary Rs. 12,704/-. Regarding the said incident, the F.I.R. was lodged on the basis of the *fardbeyan* of the Chawkidar (Brijraj Singh) under Section 379A, 337, 338 of the Indian Penal Code. The offending truck was insured by the National



Insurance Company Ltd. (appellants) at the relevant time of accident. The claimants happen to be wife and son respectively of the deceased.

5. The National Insurance Company Ltd. putting its appearance in the case filed the written statement while owner and driver of the offending vehicle did not turn up before the court and so the case proceeded Ex-party against them. After hearing the parties and perusing the record, the learned Tribunal has passed the aforesaid Judgment and Award as stated in the earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid Judgment and Award, the appellants have filed this appeal on the ground that the driving licence possessed by the driver of the offending vehicle was not valid rather was fake. Hence, Insurance Company is not liable to pay compensation to the claimants indemnifying the owner of the vehicle. It has assailed the order of pay and recovery passed by the learned Tribunal on the ground that the Tribunal has no authority to pass any such order and also assailed the impugned judgment on the ground that the multiplier adopted by the Tribunal to workout compensation is wrong.

7. On the other hand, it has been submitted by the learned counsel for the respondent nos. 1 to 4 that the deceased was aged about 56 years and the learned Tribunal has rightly adopted the



multiplier of 8 as per IIInd Schedule of the Motor Vehicle Act to work out the compensation. It has further submitted that even if the driving licence was not valid and fake but as the claimants happen to be third party to the contract of policy entered into by owner and Insurance Company so in the interest of justice, the learned Tribunal has rightly directed the Insurance Company to pay the amount of compensation and recover the same from the owner of the offending vehicle.

**8.** From the perusal of the impugned Judgment, it appears that the deceased was aged about 56 years at the time of accident. As per IIInd Schedule of Motor Vehicle Act and as per the prevailing economic era, the multiplier of 8 adopted by the learned Tribunal to work out the amount of compensation appears to be correct and proper.

**9.** From the perusal of the impugned Judgment, it further appears that driving licence possessed by the driver of the offending vehicle was not valid rather fake as apparent from the verification report of the driving licence made by the surveyor of the appellants marked as Ext-B. As the occurrence is of 15.01.2004 and the driving licence for the period of 13.03.1998 to 06.04.2008 was not in the name of driver (Badrilal) rather in the name of some other person namely Raj Kumar Singh, S/o Wishwanath Singh. As the driving licence was fake, hence, there was infraction of the terms and



conditions of the policy, so the appellants (Insurance Company) are not liable to pay any compensation to the claimants indemnifying the owner of the offending vehicle. But as the claimants happen to be third party to the contract of policy entered into between the Insurance Company and the owner of the offending vehicle, hence, in my considered opinion to subserve the ends of justice, the appellants (Insurance Company) are directed to pay the aforesaid compensation amount and interest thereon as awarded by the learned Tribunal to the claimants with liberty to recovery the same from the owner of the offending vehicle.

**10.** In view of aforesaid facts and circumstances of the case, I do not find any irregularity and illegality in the impugned judgment passed by the learned Tribunal. Accordingly, it is upheld and this appeal filed by the appellants is dismissed.

**11.** Let the statutory amount to the tune of Rs. 25,000/- deposited by the appellants be sent to the learned Tribunal for adjustment towards the aforesaid payment.

**(Prakash Chandra Jaiswal, J)**

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