

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.109 of 2016

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Sanjay Kumar @ Sanjay Kumar Gupta, son of Sri Radha Kishun Gupta, resident of
Village - Sahatwar, P.O. & P.S. - Satwar, District - Balia (U.P.)

.... Opposite Party-Appellant.

Versus

1. Most. Prabhawati Devi, wife of Late Visheshwar Prasad Gupta.
2. Vikash Kumar Gupta.
3. Chandan Kumar Gupta.

Both 2 and 3 sons of Visheshwar Prasad Gupta.

All resident of Village - Naya Bhojpur, Police Station - Dumraon, District -
Buxar.

.... Petitioners-Respondents.

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Appearance :

For the Appellant : Mr. Bachan Jee Ojha, Advocate.

For the Respondentw : M/s. Nazmul Hoda and Virendra Kumar, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 13-01-2017

Heard learned counsel for the appellant and the learned
counsel for the respondents.

2. This Miscellaneous Appeal is directed against the order
dated 10.09.2015 passed in Misc. Case No.04 of 2015 by the
Additional District Judge-I-cum-Motor Accident Claim Tribunal,
Buxar, dismissing the application of the opposite party/appellant filed
under Order IX Rule 13 of the Code of Civil Procedure to set aside
the ex parte Judgment and Award dated 05.09.2012 passed in M.V.
Claim Case No.12 of 2002, directing the opposite party/appellant and
one Harendra Chauhan to pay compensation of Rs.1,13,500/- with



interest of 9% per annum from the date of institution of the claim case till realization.

3. The fact, leading to this Miscellaneous Appeal, is that the respondents filed the M.V. Claim Case No.12 of 2002 with the contention that the deceased Visheshwar Prasad Gupta, the husband of the respondent no.1 and father of the respondent nos.2 and 3. was traveling on 21.04.2002 boarding on tractor bearing Registration No.BR-44/0292 attached with Trailer No.BR-44/2590. When the said tractor reached near 500 yards east to Shiv Temple of village-Dhakaich, P.S. Krishna Braham, at NH-84, a loaded truck bearing Registration No.UP-52C/0463 came to front and dashed the tractor in which the deceased Visheshwar Prasad Gupta sustained injury. He was rushed for treatment to the Hospital, Dumraon, from where he was referred to P.M.C.H., Patna, where he died.

In the said claim case, Harendra Chauhan, Sanjay Kumar alias Sanjay Kumar Gupta (appellant) being the driver and owner of the truck bearing Registration No.UP-52C/0463, and the Chairman, the New India Assurance Company Limited, Mahatma Gandhi Marg, New India Assurance Building-87, Fort, Mumbai, through the Branch Manager, the New India Assurance Company Limited, 420/05 Haldi Kothi, Ballia, District-Ballia (U.P.) were made as opposite party nos.1, 2 and 3 respectively.



On issuance of notice, while opposite party no.3 appeared but the opposite party nos.1 and 2, respectively, the driver and owner of the truck in question, did not appear. Thereafter, the notice was published in the newspaper for appearance of opposite party no.2/appellant and the aforesaid M.V. Claim Case No.12 of 2002 proceeded ex parte on 05.05.2011. After recording the evidence as adduced on behalf of the claimants/respondents, the Claim Case was allowed through the Judgment and Award dated 05.09.2012, directing the opposite party no.2/appellant and the opposite party no.1 Harendra Chauhan to pay compensation of Rs.1,13,500/- with interest @ 9% per annum from the date of filing of the claim case till realization.

The opposite party no.2/appellant came to know about the ex parte Judgment and Award dated 05.09.2012 after issuance of certificate for recovery of amount of compensation of Rs.1,13,500/- and, thereafter, he filed an application under Order IX Rule 13 of the Code of Civil Procedure numbered as Misc. Case No.04 of 2015 on 06.04.2015 to set aside the said Judgment and Award but the same was dismissed through the impugned order dated 10.09.2015 by the Additional District Judge-I-cum-Motor Accident Claim Tribunal, Buxar.

4. Learned counsel for the appellant submits that it would appear from the record that on 24.03.2007, requisite was furnished by



the claimants/respondents to send the notice to the opposite party no.2/appellant, and accordingly, the notice was issued on 10.08.2007. Thereafter, the record was running for appearance of the opposite party no.2/appellant. In the meantime, on 16.12.2008, a petition was filed on behalf of the claimants/respondents for publication of notice of opposite party no.2/appellant in the Daily Newspaper without receiving the report of service of notice which was allowed on 15.09.2009 without observing the provision of Order-V Rule 20(1) of the Code of Civil Procedure. The Additional District Judge-cum-Motor Accident Claims Tribunal, Buxar, after submitting the Daily Newspaper showing the publication of notice ordered on 05.05.2011 to proceed for ex parte hearing of the claim case. After recording the evidence adduced on behalf of the claimants-respondents, the Additional District Judge-I-cum-Claim Tribunal, Buxar, passed the Judgment and Award on 05.09.2012.

5. On going through the provisions of Rule 20(1) of Order-V of the Code of Civil Procedure which relates to substituted service, it appears that where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the



Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit. In Sub Rule (1-A) of Rule 20 of Order V of the Code of Civil Procedure, it is detailed that where the Court acting under sub-rule (1) of Rule 20(1) of Order-V of the Code of Civil Procedure orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

6. The record shows that while the record was running for the appearance of the opposite party no.2/appellant, the owner of the vehicle, the claimants/respondents filed an application on 16.12.2008 for publication of notice in the Newspaper. After passing over several dates, on 15.09.2009, order was passed by the 1st Additional District Judge, Buxar for publication of the notice in the Newspaper “Dainik Jagran” without recoding the satisfaction that the opposite party no.2/appellant is keeping out of the way for the purpose of avoiding service, or that for reason, the notice could not be served in the ordinary way upon him. As such, after issuing the notice upon the opposite party no.2/appellant without receiving the service report of notice or reason for substituted service of notice, the publication of



the notice in the Daily Newspaper for appearing of opposite party no.2/appellant and to proceed ex parte hearing in the claim case on the basis of publication of notice for appearance of opposite party no.2/appellant in newspaper was illegal.

7. In the result, this Miscellaneous Appeal is allowed and the impugned order 10.09.2015 passed in Misc. Case No.04 of 2015 by the Additional District Judge-I-cum-Motor Accident Claim Tribunal, Buxar, is set aside. Consequently, the ex parte Judgment and Award dated 05.09.2012 passed in M.V. Claim Case No.12 of 2002 is also set aside. No order as to costs.

8. The parties are directed to appear before the Additional District Judge-I-cum- Claims Tribunal, Buxar on 13th of February, 2017 for further progress of Claim Case No.12 of 2002 and the Claims Tribunal is required to dispose of the aforesaid Claim Case after hearing the parties in accordance with law without any further delay.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.01.2017
Transmission Date	

