

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.348 of 2010

=====

Branch Manager National Insurance Company Ltd., Sri Nandan Path near petrol pump Salempur P.S.-Chapra, Town District-Saran represent through Shri Anjani Kumar working as A.O. and duly constituted attorney of National Insurance Company having its Regional Office at 4th Floor, Sone Bhawan, P.S. Sahiwalaya, District-Patna.

.... Appellant/s

Versus

1. Kitaban Khatoon W/o Fool Mohammad @ Kool Mohammad (deceased) R/o village-Arawa Kothi, P.O. Nagara, P.S. Khaire, District-Saran
2. Amit Kumar Singh S/o Braj Kishore Singh R/o Village-Dahiawan Tola-Tari P.O-Tari PS-Chapra Mufasil, District-Saran Owner of the Truck its bearing Reg. no. BR04A9586
3. Mohamad Jahir Hussan
4. Md. Nazir Hussan both sons of Fool Mohammad @ Kool Mohammad (deceased) R/o village-Arawa Kothi, P.O.-Nagara P.S. Khaire, District-Saran.
5. Fatama Begum W/o Sahibdeen daughter Late Full Md. R/o village-Olhanpur, P.S. Marhowrah, District-Saran.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. SHAILENDRA KUMAR
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 18-09-2017

From perusal of record, it appears that this appeal stood dismissed on 08.08.2017 against the respondent no. 3, but as the respondent no. 3 who happens to be son of the deceased (Ful Mohamad) and another son, wife and daughter of the deceased are on record and their share in the awarded amount is divisible. Hence, this appeal against rest of the heirs of the said deceased is maintainable.

Ref: Interlocutory Application no. 4573 of 2010

The aforesaid interlocutory application has been filed for condonation of delay of 25 days made in filing the appeal with the case that after obtaining certified copy of the Judgment and Award, it



took times in processing the file right from Branch Office to Regional Office and finally the file was handed over to the learned counsel of the Company for preparation of the memo of appeal and after preparing the same, the appeal was filed on 13.04.2010. Thus, there has been no deliberate latches on the part of the appellant in filing the aforesaid appeal rather the delay occurred due to aforesaid reasons.

It is settled principle of 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 and the aforesaid interlocutory application is allowed accordingly.

Heard the learned counsel for the appellant on this Miscellaneous Appeal and perused the records.

No one turned up on behalf of the respondents.

It has been submitted by the learned counsel for the appellant that the appellant has assailed the impugned Judgment and Award passed by the learned Tribunal merely on the ground that the offending vehicle was being plied without permit in utter violation of terms and conditions of the policy, hence the appellant (Insurance Company) is not liable to pay any compensation to the claimant.

On perusal of record, it appears that the learned Tribunal has awarded the final compensation to the tune of Rs. 62,000/- along with interest @ 6% per annum from the date of presentation of the



case till its realization and directed the Insurance Company to pay the aforesaid amount of compensation and interest thereon to the claimant within two months from the date of the impugned order with liberty to realize the said amount from the owner of the offending vehicle in case it finds any breach in terms and conditions of the policy.

As the learned Tribunal has already given liberty to the appellant to realize the compensation amount and interest thereon from the owner of the offending vehicle after making payment of the same to the claimant in case of any breach of terms and conditions of the policy, in my considered opinion, the impugned Judgment and Award appears to be correct and appropriate and does not require any intervention in the appeal. Accordingly, the impugned Judgment and Award passed by the learned Tribunal is upheld and this appeal is dismissed.

Let the statutory amount deposited by the appellant be sent to the learned Tribunal towards adjustment in the payment of compensation amount.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.09.2017
Transmission Date	N.A.

