IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.580 of 2007

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United India Insurance Co.Ltd. Patna City, having its Branch Office, Ranchi Road, Biharsharif, Nalanda. .... Appellant.

Versus

1. Leeham Devi, wife of Late Chandan Kumar.
2. Ramiya Devi, wife of Sri Rajendra Jamada.
3. Rajendra Jamadar, son of Late Pachu Jamadar.
   All residents of village Kewal, P.S. Chandi, District Nalanda.
4. Mahendra Singh, son of Sri Nem Narayan Singh, resident of village Rukhai, P.O. Rukhai, P.S. Chandi, District Nalanda.
5. Jai Ram Singh, son of Mahesh Singh, resident of village Garhpar, P.S. Nawada, P.S. Nawada, District Nawada.

.... Respondents.

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Appearance :
For the Appellant : Mr. Syed Qaisar Hasan
For the Respondents : None.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 05-12-2017

Re.: I.A. No.4466 of 2008

Heard learned counsel for the appellant. No one turned up on behalf of respondent nos.1 to 3 despite service of notice.

The appellant has filed the aforesaid I.A. for condonation of delay of six days in filing this appeal with the case that the certified copy of the judgment and award was delivered on 20.07.2007, whereupon the learned conducting Lawyer of the appellant sent it to the Divisional Office and the Divisional Office in turn sent it to the Regional Office for taking decision on the point of filing appeal in the matter and finally the Regional Office took decision to file an appeal and sent the matter to his learned

Lawyer for the same. But, as this Court was closed for Durga Puja and Chhath Puja holidays from 11.10.2007 to 28.10.2007 and the learned conducting Lawyer was out of station on 30.10.2007, the appeal could not be filed within time. However, learned counsel after drafting the appeal and obtaining signature of the concerned officer thereon on 02.11.2007 filed the same on 05.11.2007. There has been no deliberate and willful laches and delay in filing the aforesaid appeal.

In the facts and circumstances, I.A. No.4466 of 2008 is allowed & condoning the delay in filing the appeal, this appeal is admitted for hearing.

M.A. No.580 of 2007

This miscellaneous appeal has been preferred against the judgment dated 28.06.2007 and award dated 06.07.2007 passed by the District Judge-cum-Motor Vehicle Claims Tribunal, Nalanda (hereinafter referred to as the 'Tribunal') in Claim Case No.13 of 2004, whereby the learned Tribunal allowing the aforesaid claim petition directed the appellant-United India Insurance Company Limited (hereinafter in short referred to as the 'Insurance Company') to deposit the award amount of Rs.3,16,700/- along with interest at the rate of 9% per annum, from the date of filing of the claim petition till its realisation, after deducting Rs.50,000/- paid by it earlier under Section 140 of the Motor Vehicles Act subject to other condition regarding mode of payment of the aforesaid award amount to the claimants.

The factual matrix of the case is that claimant/ respondent nos.1 to 3 filed Claim Case No.13 of 2004 under Section 166 of the Motor Vehicles Act for awarding compensation on account of death of their husband and son respectively in the motor vehicle accident with the case in succinct that on 17.05.2003 deceased Chandan Kumar was traveling with co-villager in a Jeep, bearing registration no.BR-21A-8528, from Garchak to Kewai. At around 3 PM, when the said vehicle arrived near the village Tulsigarh on Patna Ranchi Road, it fell down by the side of the road due to rash and negligent driving of the same by its driver at the relevant time of accident. Resultantly several passengers of the vehicle sustained injuries while Chandan Kumar sustained serious injury and succumbed to his injury on the spot. Regarding the aforesaid incident Chandi P.S. Case No.116/2003 was instituted. The deceased was aged about 25 years at the time of accident and was working in a Steel Factory at Jodhpur (Rajasthan) and was getting Rs.3000/- per month from the said vocation. He was issueless.

The opposite parties put their appearance in the case and filed their written statement. Thereafter the claimants and opposite party no.3/appellant adduced ocular and documentary evidence in buttress of their case.

After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as detailed in earlier paragraph.

Being aggrieved and dissatisfied with the aforesaid judgment and award opposite party no.3/appellant-Insurance Company has preferred this miscellaneous appeal.

It is submitted by learned counsel for the appellant that the driver was not having valid driving licence at the time of accident as evident from the letter of the D.T.O., Palamu marked as Ext.A that no such driving licence, being DL No.6344/72-Palamu/PROF, was issued in the name of driver, namely, Jairam Singh. Though the said driving licence was renewed by the said driver from the D.T.O., Hazaribagh but as the original one was fake so by renewal the same cannot take the shape of genuine driving licence. Hence, the Insurance Company is not liable to pay any compensation to the claimants. It is further submitted by learned counsel for the appellant that the rate of interest awarded by the learned Tribunal i.e. 9% per annum is highly exorbitant.

From perusal of the record, it appears that the appellant by filing the letter of the D.T.O., Palamu, marked as Ext.A, has taken the case in the learned lower court that the driver of the offending vehicle, namely, Jairam Singh was not having valid driving licence at the time of accident. From the aforesaid letter, it appears that the D.T.O., Palamu has reported that the DL No.6344/72-Palamu/PROF has not been issued by his office. From perusal of the record, it further appears that the said driving licence was got renewed by the said driver from the D.T.O., Hazaribagh, as evident from the documents filed by the said driver, but as the original driving licence was fake as the same was not issued by the D.T.O., Palamu, the renewal of the same by the D.T.O., Hazaribagh cannot take away the effect of such fake licence and the fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Hon'ble Apex Court in the case of **New India Assurance Company, Shimla Vs. Kamla and others** reported in **(2001) 4 SCC 342** has been pleased to held that once the licence is a fake one the renewal cannot take away the effect of fake licence. Fake licence cannot get its forgery outfit stripped off mainly on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to renew a driving licence issued under the provisions of this Act with effect from the date of its expiry. No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. The Hon'ble Apex Court in **Oriental Insurance Company Limited Vs. Prithvi Raj** reported in **2008 (1) CCC 280 (SC)** has been pleased to held that once the licence is a fake one the renewal cannot take away the effect of fake licence. A fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged.

In view of the aforesaid facts, I find that the driver was not having valid driving licence at the relevant time of accident, hence there has been violation of terms and conditions of policy so the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle. From perusal of the impugned judgment and award, it appears that the learned Tribunal has awarded interest at the rate of 9% per annum from the date of filing of claim petition till its realization and the appellant has assailed the aforesaid rate of interest as awarded by the learned Tribunal. The said rate of interest awarded by the learned Tribunal appears to be exorbitant as the rate of interest is awarded as per the prevalent rate of interest given by the Bank. Hence, in my considered opinion, the claimants are entitled to get interest at the rate of 6% per annum from the date of filing of claim petition till its realization. As the claimants happen to be third party to the contract of policy entered between the insured and insurer and the Motor Vehicles Act is a beneficial legislation, hence the opposite party no.3-appellant is directed to pay the amount of compensation as awarded by the Tribunal along with interest at the rate of 6% per annum from the date of filing of claim petition till its realization to the claimants which would subserve the ends of justice. However, the appellant may recover the same from the owner of the vehicle after its payment.

With the aforesaid modification in the impugned judgment and award, this miscellaneous appeal is disposed of.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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