

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1017 of 2010

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1. Branch Manager, the New India Assurance Company Ltd, Chandra Lok Complex, Bhagalpur.
 2. Divisional Manager, The New India Assurance Company Limited, Patna Divisional Office-2, Govind Bhawan Dakbanglow Road, Patna-1. Both represented through Sri Prabhakar Pradhan, Dy. Manager and duly constituted attorney of the New India Assurance Company Limited having its regional officer at 6th Floor, BSFC Building, Fraser Road, P.S.-Kotwali, District-Patna.

.... Appellants

Versus

1. Uma Devi, wife of Aditya Prasad Yadav, resident of village – Jagatpur, P.S.-Sahuparbatta, District-Bhagalpur.
2. Aditya Prasad Yadav, Son of Ram Bharosi Yadav, resident of village – Jagatpur, P.S.-Sahuparbatta, District-Bhagalpur.
3. Pankaj Kumar, Son of Shyamal Kishore Mandal, resident of village – Tintanga Udakishunganj, P.S.-Udakishunganj, District-Madhepura at present residing at Barikhanjarpur, Bhagalpur (Owner of Mini Truck No. BR10E-8285 (Pickup van Tata-207)
4. Sadanand Prasad Sah, Son of Late Hari Prasad Sah, resident of village – KishanGanj, P.S.-Udakishunganj, District-Madhepura.

.... Respondents

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Appearance:

For the Appellant/s : Mr. Shailendra Kumar, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 01-12-2017

Re.: I.A. No. 6085 of 2014

Heard learned counsel for the appellants and learned
counsel for the respondents on this interlocutory application.

The appellant has filed the aforesaid interlocutory
application for condonation of delay of 14 days made in filing this
appeal with the case that on receiving the judgment and award



prepared on 10.08.2010 and 31.08.2010 respectively, the conducting lawyer advised to file appeal against it and the matter was sent to the Branch office who in turn sent it to Divisional Office and lastly it was sent to Regional Office. Regional office finally took decision to file appeal in the case and entrusted the matter to its empanelled lawyer of this court to file appeal and accordingly the aforesaid appeal was filed on 20.12.2010. There has been no deliberate laches on the part of the appellant in filing this appeal rather the aforesaid time was exhausted in taking decision by its Head Offices.

In the facts and circumstances of the case, I find that the appellant has shown sufficient cause for condonation of delay. Accordingly, the aforesaid delay in filing this appeal is hereby condoned and the aforesaid interlocutory application is allowed.

Re.: M.A. No. 1017 of 2010

Heard learned counsel for the appellants and learned counsel for the respondents on this miscellaneous appeal.

2. This miscellaneous appeal has been filed against the judgment dated 10.08.2010 and award dated 31.08.2010 passed by 1st Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Bhagalpur in Claim Case No. 46 of 2007 whereby the learned Tribunal directed the New India Assurance Company Limited to pay compensation to the tune of Rs. 1,94,500/- along with



the interest at the rate of 9% per annum to the claimants.

3. Factual matrix of the case is that respondent nos. 1 and 2 filed the Claim Case No. 46 of 2007 under Section 166 M.V. Act for awarding compensation due to death of their son in the Motor vehicle accident with the case in succinct that their son, namely, Debraj @ Devraj Kumar was a khalasi/cleaner of the Tata Mini Truck bearing registration no. BR 10E 8285. On 29.06.2006, the said truck was transporting Hindustan Newspaper and his son was sitting in the said vehicle. As soon as the said vehicle arrived near the village Bhabhtiya on Saharsa-Maheshkunt Main Road, due to rash and negligent driving of the said vehicle by its driver, it plunged into mud on the western flank of the road resultantly their son and two other persons sitting on the said vehicle sustained serious injuries and they succumbed to their injuries on the spot. Regarding the said accident, Sourbajar P.S. Case No. 216 of 2006 was instituted under Section 279/304A of the Indian Penal Code. The deceased used to get salary of Rs. 2000/- per month at the time of accident from the said vocation and he was aged about 19 years at that time.

4. Opposite party nos. 1 and 2 who happen to be the driver and owner respectively of the aforesaid vehicle despite putting their appearance in the case did not contest the case by filing written statement. Hence, the case proceeded ex-parte against them while



opposite party nos. 3 and 4 – New India Assurance Company Limited filed their written statement and countered the aforesaid case of the claimants. The claimants adduced ocular as well as documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the New India Assurance Company Limited has preferred this miscellaneous appeal.

7. It is submitted by learned counsel for the appellant that the deceased was not a cleaner/khalasi of the offending vehicle rather he was travelling on the said vehicle by sitting on the bundle of the Hindustan newspaper laden on the said vehicle. Hence, the deceased happens to be the gratuitous passenger, so the Insurance Company is not liable to pay any compensation to the claimants indemnifying the owner of the vehicle rather it is the owner of the vehicle who is squarely liable to pay the same.

8. On the other hand, learned counsel for the respondents submitted that the deceased was not a gratuitous passenger rather he was a cleaner/khalasi of the offending vehicle and the aforesaid aspect of the case also stood substantiated by the



three witnesses adduced by the claimants and Learned lower court relying upon the evidence of the aforesaid witnesses has rightly found the deceased as cleaner of the vehicle. As the deceased was a cleaner of the vehicle and the vehicle was insured by the appellant, hence appellant is liable to pay compensation indemnifying the owner of the vehicle.

9. From perusal of the record, it appears that it is the admitted case of the parties that the deceased was travelling by the offending vehicle and has died in the accident met by the said vehicle. From perusal of the deposition of CWs-1, 2 and 3 adduced by the claimants in the court below, it appears that the aforesaid witnesses have unanimously stated that the deceased was cleaner of the offending vehicle. He used to get salary of Rs. 2000/- per month. But from perusal of the F.I.R. filed by the claimants marked as Exhibit-1, it appears that some other person who happens to be commuter of the said vehicle, namely Ashish Anand, was travelling in the said vehicle sitting by the side of the driver and it also appears from the said F.I.R. that the bundle of Hindustan newspaper was laden in the dala of the said vehicle and three persons were sitting above the said newspaper who had died in the accident. Thus, the aforesaid F.I.R. eloquently indicates that the deceased was not the khalasi of the offending vehicle. Had he been khalasi, he would have



taken his position by the side of the driver. It also indicates that the deceased was travelling sitting on the bundle of the Hindustan newspaper laden on the said vehicle. The claimant has filed the aforesaid document by way of documentary evidence in the case and the same is his own documentary evidence. It is settled principle of law that where there is any discrepancy between ocular and documentary evidence, documentary evidence will prevail and outweigh the ocular evidence. Thus from perusal of the aforesaid documentary evidence of the claimants, I find that the deceased was a gratuitous passenger and not the khalasi of the offending vehicle. The Hon'ble Apex Court in **United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Ors.** as reported in (2006) 4 SCC 404 and **New India Insurance Co. Ltd., Vs. Vedvati & Ors.** reported in 2007(3) SCALE 397 has been pleased to observe that the insurance policy does not cover the gratuitous passenger. The liability of Insurance Company would be limited to a third party and not to a gratuitous passenger. The Insurance Company is not liable to indemnify the owner of the vehicle in case of death of gratuitous passenger. As the deceased was gratuitous passenger, hence appellant being the Insurance Company is not liable to pay the aforesaid amount of compensation awarded by Learned Tribunal to the claimants indemnifying the owner of the vehicle rather the owner of



the vehicle is squarely liable for the same.

10. In the facts and circumstances of the case, the aforesaid judgment and award passed by the learned Tribunal is accordingly modified and this appeal is disposed of.

11. Let the statutory amount to the tune of Rs. 25000/- deposited by the appellant be returned to it by way of cheque and the Lower Court Records be sent down to the court below.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	11.12.2017
Transmission Date	

