

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No.1681 of 2016**

- Chitrakut Das Mahant S/o Late Tejrai Mahant, Aged About 60 Years Caste Panika, R/o Village Koshanga, Police Station And Tahsil Lakhanpur, District Surguja, Chhattisgarh (Claimant/ Applicant No.1)

---- Appellant**Versus**

1. United India Insurance Company Limited Through Branch Manager United Insurance Company Limited, Branch Ambikapur, Bramhroad Ambikapur, District Surguja, Chhattisgarh(Insurer)
2. Smt. Laxmi Mahant Wd/o Ravidas @ Ravikant, Aged About 25 Years Caste Panika, R/o Village Koshanga, Police Station And Tahsil Lakhanpur, District Surguja, Chhattisgarh (Claimant/ Applicant No.2)
3. Ku. Upma Mahant D/o Late Ravidas @ Ravikant, Minor Represented Through Her Legal Guardian Mother Laxmi Mahant, Wd/o Ravidas @ Ravikant Mahant, R/o Village Koshanga, Police Station And Tahsil Lakhanpur, District Surguja, Chhattisgarh(Claimant/ Applicant No.3)

---- Respondents

For Appellant : Smt. Nand Kumari Kashyap, Advocate.
 For respondent No.1 : Shri HB Agrawal, Sr. Advocate and Shri Pankaj Agawal, Advocate.
 Respondents 2 & 3 unserved.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****06.3.2017**

Heard on IA No.01/16 for condonation of delay in filing the appeal as the same has been filed after 153 days of its limitation.

2. Facts of the case in brief is that the appellant/applicant No.1 along with respondents 2 & 3 have filed an application under Section 163-A of the Motor Vehicles Act for compensation on

account of death of one Ravidas @ Ravikant, who was driving the motor cycle bearing Registration No.CG 15 CP 6479.

3. The concerned Tribunal while hearing the matter as Claim Case No.192/14 vide its award dated 07.4.2016 held that the deceased himself was driving motor cycle rashly and negligently and in the light of **2009 (3) ACJ 2020 Ningamma Vs. United Insurance Co. Ltd**, as per para 18 & 19, Section 163-A of the Motor Vehicles Act is not attracted in a matter where LR's. of deceased step into the shoes of the owner of the motor cycle and as the owner was driving the said vehicle, compensation under Section 163-A of the Motor Vehicles Act from the insurance company is not maintainable. With this, the trial Court dismissed the claim of the the claimants. Against the said order, applicant No.1 has filed the instant appeal.

4. Learned counsel for the appellant would submit that the appellant was not aware of the limitation prescribed under the law and due to paucity of fund, he could not file the appeal within limitation, hence, delay is unintentional, bonafide and the same may be condoned and the appeal may be admitted for hearing.

5. Learned counsel for the appellant duly supports the ground taken in the appeal and prays for hearing the matter on its merits.

6. The delay in filing the the appeal is 163 days, the appellant was duly represented before the Court below and even after receipt of the copy of the award dated 07.4.2016, he failed to file the appeal within its limitation and simply citor submits that the

appellant was not aware of the limitation laws and on account of financial constraint, he was not in a position to appeal. The grounds taken by the appellant could not be held as satisfactory ground for delay. With this, delay is not satisfactorily explained. Also on consideration of the settled law as in Ningamma (supra), this Court is of the considered view that the Court below has not committed any illegality while dismissing the claim petition. Consequently, IA No.01/16 is dismissed as barred by limitation. As a consequence, the appeal filed by the appellant is also dismissed at the motion stage itself as barred by limitation and also not maintainable.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE