

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 44 of 2016

1. The Oriental Insurance Company Ltd. Through Its Branch Manager, Sadar Road, Ambikapur, Zilla- Sarguja, Chhattisgarh(Non-Appellant No.6)

---- Appellant

Versus

1. Juggi Bai W/o Lalmani, Aged About 52 Years R/o Village Ghughari, Thana/ P.S.- Janakpur, Zilla/ Dist. Korea, Chhattisgarh(Claimant No.1)
2. Surajdeen S/o Lalmani, aged about 35 years, R/o Village Ghughari, Thana/ P.S.- Janakpur, Zilla/ Dist. Korea, Chhattisgarh(Claimant No.2)
3. Lalsai S/o Lalmani, aged about 35 years R/o Village- Harchoka, Thana- Janakpur, Zilla- Korea, Chhattisgarh(Non-Appellant No.1)
4. Ramprasad R/o Village- Harchoka, Thana- Janakpur, Zilla- Korea, Chhattisgarh(Non-Appellant No.2)
5. Mangal Singh S/o Ramlakhan, R/o Village- Harchoka, Thana- Janakpur, Zilla- Korea, Chhattisgarh(Non-Appellant No.3)
6. Shyam Narayan S/o Ram Milan Singh, R/o Village- Harchoka, Thana- Janakpur, Zilla- Korea, Chhattisgarh(Non-Appellant No.4)
7. Smt. Babbi Bai W/o Ram Milan, R/o Village- Harchoka, Thana- Janakpur, Zilla- Korea, Chhattisgarh(Non-Appellant No.5)

---- Respondents

For Appellant – Smt. Chitra Shrivastava, Advocate.

For Respondents 1 and 2 – None, though served as per office note.

For Respondents 3, 4, 5, 6 and 7 – None, though represented.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

06-02-2017

1. Respondent No.4 died on 03-01-2015. Application I.A.No.6/2016 under Order 22 Rule 4 of the CPC has been allowed vide order dated 29-09-2016 and the appellant was granted two weeks' time to take necessary steps for incorporating legal heirs of respondent No.4. Thereafter on 21-10-2016 this Court again directed to remove the said default arises out of the order dated 29-09-2016 till 2nd of November, 2016, further directed that failing which the instant MAC shall stand dismissed without further reference to the Bench.
2. Till date the said default is not removed. This fact is recorded.

3. Heard on I.A.No.1/2016 for condonation of delay in filing the appeal as the instant MAC has been preferred after 14 days of its limitation.
4. On due consideration, for the reasons mentioned in I.A.No.1/2016 and the argument advanced, this Court is of the considered view that the appellant has satisfactorily explained the delay of 14 days. Consequently, I.A.No.1/2016 is allowed and the delay of 14 days in filing the instant MAC is condoned.
5. Also heard on admission.
6. The MAC is admitted for consideration.
7. Registry is directed to call for the record of the concerned Tribunal through usual mode and fax mode.
8. Also heard on I.A.No.2/2016 for exemption from filing certified copy of permission granted under Section 170 of the Motor Vehicles Act, 1988 (in short 'the Act, 1988').
9. Learned counsel for the appellant places reliance on an order passed by the Hon'ble Apex Court dated 23-10-2013 in Civil Appeal No. 9427/2013 (Special Leave Petition (C) No. 22535/2009) - **Bajaj Allianz General Insurance Company Ltd. -v- Kamla Sen and others**, in which Hon'ble Apex Court quoted para 19 and 20 of the judgment in the matter of **United Insurance Co. Ltd. -v- Shila Datta and others** reported in (2011) 10 SCC 509 which are reproduced below :-

“(19) Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the Tribunal Under Section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available Under Section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party.

(20). When a statutory notice is issued Under Section 149(2) by the Tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in

regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can, however, be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal Under Section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim."

The Hon'ble Apex Court set aside the impugned judgment and order passed by the High Court whereby the High Court dismissed the appeal of the appellant on the ground that since it had failed to move an application under Section 170 of the Act hence it was not open to the appellant to challenge the award of the Motor Accident Claims Tribunal, Hoshangabad in Claim Case No. 21/2008 dated 28-7-2008 except on the grounds provided under Section 149 of the Act and with this upheld the quantum of compensation as awarded by the Tribunal.

Learned counsel for the appellant submits that in light of above cited case law, the appellant is not required to file certified copy of the permission granted under Section 170 of the Act, 1988. Hence, I.A.No.2/2016 may be allowed and appellant may be exempted from filing certified copy of the permission granted under Section 170 of the Act, 1988 by the Tribunal.

10. On due consideration, looking to the cited case law, I.A. No. 2/2016 is hereby allowed. The appellant is exempted from filing certified copy of the order passed under Section 170 of the Motor Vehicles Act, 1988.

11. Also heard on I.A.No.8/2016, application for amendment in cause title.

12. By filing the instant interim application, the applicant (appellant) has prayed in para 3 of the interim application that Ramprasad, respondent No.4 is wrongly mentioned, with this, name of Ramprasad be deleted and correct name Ramsai S/o Lalmani be substituted.

13. After perusal of the award dated 18-08-2015, it appears that Ramprasad S/o not known, age not mentioned was non-appellant No.2, no any effort has been done during the trial Court to correct the name of non-applicant No.2

Ramprasad as Ramsai. Even apart, the appellant vide filing I.A.No.6/2016 which was allowed on 29-09-2016 prayed that respondent No.4 Ramprasad has expired on 03-01-2015, death certificate is annexed with and name of respondent No.4/non-applicant No.2 Ramprasad may be deleted. This Court vide order dated 29-09-2016 allowed the said I.A.No.6/2016 and directed the appellant to take necessary steps within two weeks. But, no any steps have been taken. Thereafter, a peremptory order has been passed dated 21-10-2016 to remove the said default arises out from the order dated 29-09-2016 till 2nd of November, 2016, failing which, the instant MAC shall stand dismissed without further reference to the Bench.

14. As there was no any effort for the correct name of non-appellant No.2 before trial court, as prayed in I.A.No.8/2016 and also as the said respondent No.4 has already died and this Court directed to take necessary steps to incorporate the legal heirs and till date no any application to incorporate the name of legal heirs of respondent No.4 was ever filed, with this, I.A.No.8/2016 is having no substance and as such same is hereby dismissed as not maintainable.

15. As the appellant has not complied with the order dated 29-09-2016 and the order dated 21-10-2016, the MAC is dismissed for non-compliance. However, the appellant may take necessary steps if available under the law.

16. MAC dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE