

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.23 of 2012

Branch Manager, National Insurance Co. Limited, Rajendra Nagar, Nawadah,
represented through Shri Anjan Kumar, working as A.O. and duly constituted
attorney of National Insurance Company Limited, having its Regional Office
at 4th Floor, Sone Bhawan, Bir Chand Patel Path, P.S.-Sachiwalaya, District –
Patna.

... .. Appellant/s

Versus

1. Paro Devi, wife of Late Bhola Sharma.
2. Sintoo Kumari, D/o Late Bhola Sharma.
3. Vikki Kumar, S/o Late Bhola Sharma.
4. Bindu Kumari, minor D/o Late Bhola Sharma, minors under the
guardianship of their mother Paro Devi
All residents of Jainagar, P.O.-Manjauli, P.S.-Sirdalla, District – Nawada.
5. Manoj Kumar Chourasia, S/o Srikant Prasad Chourasia, resident of 242/2
Manik Talla, Main Road, P.S.-Narkeldanga, Kolkata-700054-Owner of the
vehicle being its registration no. WB-41/4999.
6. Rajiv Ranjan Kumar Singh, S/o Ram Swarup Singh, resident of 98 Manis
Tall, Main Road, Kolkata.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Shailendra Kumar
For the Respondent nos.1 to 4	:	Mr. Manish Kumar, Advocate. Mr. Ajay Kumar, Advocate.

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**
ORAL JUDGMENT
Date : 01-10-2018

Re.: I.A. No. 620 of 2016

Appellant has filed the aforesaid interlocutory
application for condonation of delay of 1 year 6 months and 7
days in preferring this appeal with the case that the appeal was
to be filed by 06.05.2013. After signature upon the judgment
and award on 23.07.2011 and 04.02.2013 respectively, the copy



of the same was supplied to the conducting lawyer of the appellant in the Civil Court which in turn was sent to Regional Office of the appellant and after obtaining the same, Regional Office of the appellant concluded to file the appeal in the matter as soon as possible. Accordingly, file was handed over to his empanelled lawyer who after drafting the same filed this appeal on 05.01.2012 but without certified copy of the award. Hence vide order dated 09.10.2014, this court directed the appellant to file the certified copy of the award and in compliance of the aforesaid order, the award was filed on 13.11.2014. Thus there has been no deliberate laches on the part of the appellant in preferring this appeal rather aforesaid delay was due to the aforesaid reason.

Respondent no.5 filed no rejoinder against the aforesaid interlocutory application.

It is settled principle of law that justice should be done after hearing the parties and injustice should not be done merely on technicality by shutting down the opportunity of hearing to parties.

In the facts and circumstances and in the interest of justice, delay made in preferring the aforesaid appeal is hereby condoned and the aforesaid I.A. is accordingly allowed.



Re.: M.A. No. 23 of 2012

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

2. This miscellaneous appeal has been preferred against the judgment dated 23.07.2011 and award dated 04.02.2013 passed by the Additional District Judge, F.T.C.-III cum Motor Vehicle Accident Claim Tribunal, Nawada in M.V.A. Claim Case No. 44 of 2009 / 28 of 2010 whereby the learned Tribunal allowing the claim petition directed the opposite party no.1-National Insurance Company Limited to pay compensation to the tune of Rs. 3,55,000/- along with the interest at the rate of 8% per annum from the date of filing of the claim case to the claimants.

3. Factual matrix of the case is that claimants filed M.V.A. Claim Case No. 44 of 2009 / 28 of 2010 under Section 166 of the M.V. Act for awarding compensation to the tune of Rs. 2,00,000/- on account of death of the deceased Bhola Sharma in the Motor Vehicle Accident with the case in succinct that the deceased Bhola Sharma was a labourer of the Mini Truck bearing registration no. WB-41-4999. On 11.11.2007 at 06:30 AM, he was proceeding by the aforesaid



truck from Kolkata to Jamurka and when the said truck arrived near Dharmkata Raniganj G.T. Road, due to rash and negligent driving of the offending vehicle by its driver, it turned turtle resultantly Bhola Sharma received grievous injury and died on the spot. Aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. The deceased was 45 years at the time of accident and used to get Rs. 3500/- out of the aforesaid vocation.

4. Only opposite party no.1 – National Insurance Company Limited put its appearance in the case and filed written statement. Opposite party nos. 2 and 3 did not appear in the case despite service of notice, hence the case proceeded ex-parte against them. Claimants adduced ocular as well as documentary evidence in buttress of their case.

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

6. Being aggrieved and dissatisfied with the impugned judgment and award, opposite party no.1-National Insurance Company Limited has preferred this appeal.

7. The appellant has filed this appeal on the sole



ground that the deceased was a labourer and offending vehicle was a goods carriage vehicle and the deceased was travelling on the said vehicle neither as the owner of the goods nor an authorized representative of the owner of the goods being carried by the offending vehicle rather as a gratuitous passenger and no premium of the deceased has been paid by the insured, hence Insurance Company is not liable to pay any compensation to the claimants on the account of demise of the aforesaid deceased rather the owner of the offending vehicle is squarely liable for the same. Appellant has also raised the said defence in its written statement. But learned Tribunal without framing an issue on the aforesaid controversy and deciding it passed the aforesaid judgment and award which is liable to be set aside.

8. On the other hand, it is submitted by learned counsel for the respondents that the deceased happens to be a labourer of the offending vehicle and being the labourer the Insurance Company is liable to pay compensation to the claimants in case of his death in the motor vehicle accident.

9. From perusal of the record, it appears that the appellant by filing written statement has taken the specific case that the deceased was a labourer and was travelling on the



goods carriage vehicle. He was neither the owner nor an authorized representative of the owner of the goods being carried by the offending vehicle and no premium has been paid by the insured for the aforesaid deceased. Hence Insurance company is not liable to pay any amount of compensation to the claimants indemnifying the owner of the vehicle. Learned Tribunal has also referred the aforesaid case of the appellant in its judgment. But it neither framed any issue on the aforesaid controversy raised by the appellant nor decided the same. Learned Tribunal ought to have framed an issue on the aforesaid controversy raised by the appellant and decided the same after hearing the parties. Hence the impugned judgment and award passed by the learned Tribunal is wrong and bad in law.

10. Accordingly, the impugned judgment and award passed by the learned Tribunal is set aside and the case is remitted back to the learned Tribunal to decide the aforesaid controversy by framing an issue on it and giving opportunity to both the parties for adducing the evidence and advancing their argument on the same, within two months from the date of receipt/production of a copy of this order. Accordingly, this appeal is disposed of.



11. Let the statutory amount deposited by the
appellant be returned to it through cheque.

(Prakash Chandra Jaiswal, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	

