

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.327 of 2009

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Puran Pandit, son of Late Yadu Pandit, resident of Latbasepura, P.S. Musridharari,
District Samastipur, presently resident of Harishankar Maiari P.S. Maniari, District
Muzaffarpur. Appellant.

Versus

1. Sunil Jain Kothari, son of Dhan Kumar Kothari, Palam Road, Gurgaon.
 2. The Divisional Manager, United Insurance Company Limited, Muzaffarpur.
- Respondents.

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Appearance :

For the Appellant : Mr. Subrateswar De, Adv.

For the Insurance Company : Mr. Ashok Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 07-05-2018

Learned counsel for respondent no.2 is present while the
notice upon respondent no.1 has not yet been served.

From perusal of the record, it appears that the case has
proceeded ex parte against respondent no.1 in the learned Court
below. Hence, in my considered opinion, there is no need of
taking any recourse of substituted service of notice against
respondent no.1. The appellant is exempted to take such
recourse.

Re.: I.A. No.3964 of 2009

This interlocutory application has been filed for



condoning the delay of 26 days in preferring this appeal.

Respondent no.2 has not filed any counter affidavit against the aforesaid limitation petition.

Considering the facts and circumstances of the case and the submissions made by the appellant, I find that the appellant was prevented by sufficient cause in preferring the appeal within the stipulated period of limitation. Hence, the aforesaid delay in filing the appeal is condoned and this interlocutory application is allowed.

M.A. No.327 of 2009

Heard learned counsel for the appellant and learned counsel for the United India Insurance Company Limited on this miscellaneous appeal.

This miscellaneous appeal has been preferred against the judgment dated 16.01.2009 and award dated 23.01.2009 passed by the 5th Additional Motor Accident Claim Tribunal, Muzaffarpur in Claim Case No.38 of 2003 whereby learned Tribunal directed the United India Insurance Company (hereinafter in short referred to as the 'Insurance Company') to pay the amount of compensation to the tune of Rs.50,000/- along with interest at the rate of 6% per annum from the date of order to the claimant.



The factual matrix of the case is that appellant-claimant has filed Claim Case No.38 of 2003 for awarding compensation on account of death of his minor son, namely, Subodh Kumar aged about four years, with the case in succinct that on 23.01.2003 the deceased Subodh Kumar was standing on the southern side of N.H.28 at Bhati Chowk, P.S. Musarigharari, District Samastipur. In the meantime, a truck bearing registration no. HR 55 A-4652 being rashly and negligently driven by its driver arrived there and dashed Subodh Kumar. Resultantly, Subodh Kumar sustained injury and he succumbed to his injury. Regarding the aforesaid accident Musarigharari P.S. Case No.5 of 2003 was instituted against the driver of the offending vehicle. The aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. The vehicle was insured by the Insurance Company at the time of accident.

The owner of the vehicle did not put his appearance in the case and the case proceeded ex parte against him and the Insurance Company by filing written statement contested the case. The claimant adduced ocular as well as documentary evidence in buttress of his case.

After hearing the parties and perusing the record, the



learned Tribunal passed the impugned judgment and award as detailed in earlier paragraph.

Being aggrieved and dissatisfied with the aforesaid judgment and award, the claimant has preferred this appeal.

The claimant has assailed the aforesaid judgment and award only on the quantum of compensation. It is submitted by the appellant that the learned Tribunal has granted only Rs.1,00,000/- towards the amount of compensation out of which Rs.50,000/- was received by him under Section 140 of the M.V. Act. The Hon'ble Apex Court in the case of **Manju Devi and another Vs. Musafir Paswan** and another reported in **2003 (2) PLJR 120 (SC)** has been pleased to grant compensation to the tune of Rs.2,25,000/- with the interest as awarded. Hence, the claimant is entitled to get the aforesaid amount of compensation from the Insurance Company.

Learned counsel for the Insurance Company frankly conceded to the aforesaid amount of compensation as claimed by the appellant.

As the claimant has filed this appeal for allowing the compensation amount to the tune of Rs.2,25,000/- and the Insurance Company is ready to pay the said amount, hence on the consensus of parties, the Insurance Company is directed to



pay Rs.2,25,000/- along with interest at the rate of 6% per annum from the date of order to the appellant after deducting the amount already paid by it. The aforesaid judgment and award passed by the learned Tribunal is modified accordingly and this miscellaneous appeal stands disposed of.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.05.2018
Transmission Date	14.05.2018

