IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.760 of 2014

==

1. Most. Anupam Devi, W/o Late Ram Baran Singh
2. Himanshu Kumar, S/o Late Ram Baran Singh
3. Priyanka Kumari, D/o Late Ram Baran Singh
4. Menka Kumari,D/o Late Ram Baran Singh

Serial no.3 and 4 are minor daughters of Late Ram Baran Singh under the guardianship of their mother the natural guardian.

All are permanent resident of Village and P.O. Mustafapur, P.S. Suryagarha, District- Lakhisarai at present, C/o Sadanand Singh, House of Harishankar Singh (Retd. I.A.S.), Ram Suchit Mishra Path, East Boring Canal Road, P.S.-Buddha Colony, District/Town-Patna (Claimants)

... ... Appellant/s

Versus

1. General Manager, Bajaj Allianz General Insurance Com. Ltd.504 & 508 Mahavir Tower, 5th Floor, Opposite Church Complex, Main Road, Ranchi-834001 (Insurer of Scorpio Jeep No. JH-13A/4708)
2. Md. Arsad Ali, S/o Late Abdul Rashid at Line Mohalla Chatra, P.O.,P.S. and District- Chatra (Jharkhand) (owner of the vehicle)
3. Bikram Kumar Singh, S/o Ram Kishun Singh, at Line Mohalla Chatra, P.O., P.S/ and District- Chatra (Jharkhand) at present Mohalla Sipara, P.S. Beur, District- Patna.

... ... Respondent/s

==

Appearance :

For the Appellant/s : Mr. Mukesh Prasad Singh, Adv.

For the Respondent no.1 : Mr. Durgesh Kumar Singh, Adv

==

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 16-09-2019

<u>I.A. No. 6725 of 2015</u>

Heard the parties.

This interlocutory application has been filed for condonation of delay of 87 days in filing the present appeal.

Sufficient reasons have been shown to condone the delay in filing appeal, accordingly the Interlocutory application is allowed and the delay in filing this appeal is condoned.

I.A No. 6725 of 2015 is allowed.

<u>M.A. No. 760 of 2014</u>

This appeal under section 173 of the Motor Vehicle Act has been filed on behalf of claimant for setting aside the order dated 21.06.2014 passed by Adhoc District Judge-7th-cum-Motor Accident Claims Tribunal, Patna, in Claim Case No. 17 of 2011 by which the claims tribunal has fastened the liability to pay compensation on the owner of the offending vehicle although the vehicle was covered by the insurance policy on the date of accident.

2. Claimants are widow and children of deceased

Rambaran Singh, who in their claim application has stated that on 29.11.2010 husband of claimant no. 1. Rambaran Singh was posted as B.S.F. Sector Head Quarter, Khangda Camp, Kishanganj, and while he was crossing the road at about 12:30 P.M. in the meantime one Scorpio bearing registration No. JH13A-4708 which was being driven in a rash and negligent manner dashed against Rambaran Singh as a result of which he sustained grievous injuries and died on the spot.

3. F.I.R. was instituted giving rise to Kishanganj P.S. Case No. 370 of 2010 instituted under Sections 279 and 304(A) of the Indian Penal Code and after investigation police found the allegation of rash and negligent act to be true against the driver of the offending vehicle and submitted chargesheet against him. The offending vehicle was insured with Bajaj Allianz Insurance Company Ltd. on the date and time of accident.

4. On the notice the owner of the offending vehicle and insurer appeared and filed their separate written statement. During pendency of claim case, application under Section 140 of Motor Vehicle Act was filed on behalf of claimant for payment of interim compensation of Rs. 50,000/- (fifty thousand).

5. Claims Tribunal absolved the opposite party no.1 insurance company from making payment of the interim compensation and directed the owner of the offending vehicle to pay the compensation amount and aggrieved by said order, the present appeal has been filed by the claimants.

6. Written statement was filed on behalf of insurance company, opposite party no.2 in which they have denied that offending vehicle was insured by the company. The cheque which was issued by opposite party no.2 the owner of the offending vehicle in favour of insurance company opposite party no.1 was dishonored as disclosed in the memo dated 25.06.2012 issued by the concerned Bank and thereafter no premium was paid as such, same being in violation of Section 64 (B) of the Insurance Act, 1938 they are not liable to pay the compensation amount as opposite party no.2 had not deposited any premium. In view of Section 25 of Indian Contract Act, there was no contract between the insurer and the insured on the date of accident and have denied their liability to pay the compensation amount.

7. The Tribunal on the basis of documents produced by opposite party no.1 insurance company has held that premium for insurance through cheque dated 04.10.2010 was

made to insurance company on 04.10.2010, however, same was dishonored on 17.10.2010 due to insufficient fund in the account of account holder whereas the previous insurance policy expired on 05.10.2010. The date of the accident is 29.11.2010 and the period of insurance was 06.10.2010 to 05.10.2011 but the cheque which has been issued by the owner of the offending vehicle dated 04.10.2010 was dishonored on 17.10.2010 as such insurance was not valid on date of accident i.e. 29.11.2010.

8. The claims tribunal has further held that according to terms of insurance policy dated 04.10.2010 one of the conditions is that if the premium is paid through the cheque and same is dishonored then the policy will *suo moto* lapse as such the policy was not effective on the date of accident as the cheque was dishonored on 17.10.2010 as such tribunal has fastened the liability to pay the compensation upon the owner of the offending vehicle.

9. The counsel for the claimant/appellant has relied upon a judgment of the Apex Court in case of **Oriental Insurance Company Ltd. Vs Inderjit Kaur and others** since reported in **1988 (1) Supreme Court Cases 371** and **United India Insurance Company Ltd. Vs. Laxmamma & Ors**

reported in **2012 (3) T.A.C. 8 Supreme Court**, in which similar question had arisen whether the United India Insurance Limited (insurer) is absolved of its obligations to the third party under the policy of insurance because the cheque given by the owner of the vehicle towards the premium got dishonored, subsequent to the accident and thereafter insurer company cancelled the policy of insurance, and the Apex Court has held that in such circumstances insurance company is liable to pay the compensation amount to the claimant.

10. The case of appellant stands on a better footing. The offending vehicle was insured with the company for the previous year and policy was valid till 05.10.2010. A cheque dated 04.10.2010 was issued by the Owner of the offending vehicle for payment of premium for the period from 05.10.2010 till 04.10.2011. However, same was dishonored on 17.10.2010 and owner of the vehicle paid the premium by cash on 18.11.2010 and as such, on the date of accident i.e. 29.11.2010, the offending vehicle remained insured by the insurance company for the period from 06.10.2010 to 05.10.2011. The insurance policy was never cancelled by the insurance company pursuant to dishonour of cheque by the Bank on 17.10.2010. The information with respect to

dishonour of cheque dated 04.10.2010 on 17.10.2010 was given by Bank on 25.06.2012 to the insurance company.

11. For the reasons as stated above the order passed by the tribunal is modified to the extent that insurance company shall pay the interim compensation amount to the claimant/appellant within 30 (thirty) days from the date of receipt/production of a copy of order passed by this court.

12. This miscellaneous appeal is allowed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2019
Transmission Date	NA