IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.213 of 2014

United India Insurance Company Limited through

(A) Branch Manager, United India Insurance Co. Ltd. Ramashis Chowk, Hajipur
(B) Branch Manager, United India Insurance Co. Ltd., Tobacco House, 3rd Floor, Old Court House Corner, Kolkata-700001,
Appeal and Appellant through the Manager and Authorized Signatory, Regional Office, United India Insurance Company Limited, 3rd Floor, Chanakya Towers, R'Block, Patna.

... ... O.P. 2 /Appellant

Versus

1. Md. Serajuddin S/O Abdul Hakim
2. Quraisha Khatoon W/O Md. Serajuddin
3. Ishrat Parveen D/O Md. Serajuddin
   All the above are resident of Village- Shambhupatti, P.S. Mahua, Dist. Vaishali. Claimants/ Respondents
4. Saizar Enterprizes Pvt. Ltd. Transport Nagar Campus, Dimna Road, Mango, Jamshedpur, Dist- Singbhum East, Jharkhand, (owner of NL. 05D.4249)
5. Kesava Ray S/O V. Venkataramaiah 32/1384, 5th Street, J V R Colony, Podalakur Road, Dist. Mallaore, Andhra Pradesh (Owner of AP.26W.9176)
   O P -3 / Respondent
6. Reliance General Insurance Co. Ltd. Through
   (A) Manager Legal, Reliance General Insurance Co. Ltd. Himalaya House, 8th Floor, 38 Bjawahar Lal Nehru Road, Kolkata-700071
   (B) Branch Manager, Reliance General Insurance Co. Ltd., Kaushalaya Apartment, Bandar Bagicha, Dak Bunglow Road, Patna
   O P-4 / Respondent

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with

Miscellaneous Appeal No. 489 of 2014

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1. Md. Serajuddin and Ors. S/o Late Abdul Hakeem
2. Koraisha Khatoon W/o Md. Serajuddin
3. Israt Parveen D/o Md. Serajuddin
   All are Resident of Sembhopatti, P.S. Mahua, District Vaishali. (Claimants in the Claim Case)

... ... Appellant/s

Versus

1. Saizar Enterprises Private Limited, Transport Nagar Campus, Dimna Road, Mango, Jamshedpur, District, Shibhum East, Jharkhand – 831012 (Opp. Party No.1 in the Claim Case) (Owner of Truck bearing No.NL-05D/4249)
2. United India Insurance Co. Ltd. through its,
   (a) Branch Manager, United India Insurance Co. Ltd., Ramashish Chowk, Hajipur

   (b) Branch Manager, United India Insurance Co. Ltd., Tobacco House, 3rd Floor, Old Court House Corner, Kolkatta- 700001
   (Insurer of Truck bearing NO.NL-05D/4249) (Opp. Party No.2 in the Claim Case)
3. Kesava Rao S/o V. Venkataramaiah 32/1384, 5th Street, J.V.R. Colony, Podalakur Road, District Nellore, Andhra Pradesh. Owner of Lorry No. AP-26W/9176.(Opp. Party No.-3 in the Claim Case).
4. Reliance General Insurance Company Limited through its
   (a) Manager Legal, Reliance General Insurance Co. Ltd. Himalaya House 8th Floor, 38-B, Jawahar Lal Nehru Road, Kolkata-700071

   (b) Branch Manager, Reliance General Insurance Co. Ltd., Kaushlya Apartment, Bandar Bageecha, Dakbunglow Chowk, Patna (Insurer of Lory No.AP-26W/9176). (Opp. Party no.-4 in the Claim Case)

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 213 of 2014)
For the Appellant/s : Mr. Durgesh Kumar Singh
For the Respondent/s : Mr.
(In Miscellaneous Appeal No. 489 of 2014)
For the Appellant/s : Mr. Rajen Sahay
For the Respondent/s : Ms. Archana Sinha @ Archana Shahi

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 06-05-2019

I.A. No.164 of 2015 (in M.A. No.213 of 2014):

Heard.

This interlocutory application has been filed for condoning the delay of 2 months and 13 days in filing miscellaneous appeal.

For the reasons stated in the interlocutory application, this Court is satisfied that appellants were prevented for sufficient cause in filing the appeal within time, as such, the delay in filing the present appeal is condoned.

I.A. No.164 of 2015 stands allowed.

M.A. No.213 of 2014 :

Heard the parties.

Aggrieved by the judgment dated 01.10.2013 and award dated 28.10.2013 passed by Ad hoc Addl. District Judge-II cum M. V. A.C. Tribunal, Hajipur, Vaishali in Claim Case No. 146 of 2010, appellant – United India Insurance Company Limited has filed this miscellaneous appeal no.213 of 2014 against fastening the liability to pay 50% of compensation amount to the claimant.

Briefly stated, the facts of the case is that on 01.07.2009 at about 2:00 P.M. the claimant No. 1 along with his deceased son was driving truck No. 05D-4249 and was carrying it to Bangalore when in Nellore in Andhra Pradesh one truck bearing AP26W9176 dashed against the truck from behind, as a result of which the driver (claimant) and his deceased son (cleaner) became grievously injured and his son (cleaner) who was sitting in the truck died on the spot.

The claimants are mother, father and sisters who have claimed Rs. 5 lacs as compensation on account of death of deceased in an accident due to rash and negligent driving by the driver of offending vehicle.

Notices were issued upon which opposite party No. 2 and 4 who appeared and filed their written statement. Opposite party No. 1 is the Private Limited Company which took truck for transportation and opposite party No. 3 Keshava Rao is the owner of said truck and although they appeared but they neither filed any written statement nor contested the case.

According to claim petition, earning of deceased was Rs. 2,900/- and he was provided Rs. 60/- per day as daily expenses and his age at the time of death was 21 years. He used to give all his income to his family. In support of claim case, claimants have examined witnesses who have supported their case that the deceased died due to rash and negligent driving by the driver of offending truck and apart from oral evidence, documentary evidences were also adduced which have been marked as Exhibits which included copy of FIR, Ext.1, Final Form, Ext. 2 and Postmortem Report, Ext.3.

On the date of accident, the truck on which deceased was sitting was insured with opposite party No. 2 United India

Insurance Company and offending vehicle which collided with said Truck was insured with opposite party No. 4 - Reliance Insurance Company. In support of which photocopy of Insurance policy has been brought on record which has not been controverted by the Insurance Company.

On the basis of oral and documentary evidences adduced before the Tribunal, the Tribunal has come to a finding that the deceased died due to accident arising out of negligent and rash driving by the driver of offending truck and held that the claimants are entitled for compensation from the owners of the vehicle.

The Tribunal has disbelieved the monthly income as no evidence was brought on record and on the basis of minimum wages notification issued by Central Government according to which the daily wages of unskilled labourer is Rs. 120/- and on the basis of which, Tribunal has assessed the annual income of the deceased as Rs. 43,200/-. At the time of accident, he was unmarried and has deducted 50% of his annual income for his personal expenses and loss of dependency has been assessed as Rs. 21,600/- and on applying multiplier of 17 Rs. 3,67,200/- has been held to be just and adequate compensation, and, thereafter, has granted additional compensation for funeral expenses as Rs. 2000/-, for loss of estate as Rs. 2,500/- and has held the total compensation amount as Rs. 3,71,700/- and has held that since the vehicles were insured with opposite party Nos. 3 and 4, they are liable to indemnify the owner of the truck by paying compensation amount. The prayer was made by the Insurance company before the Tribunal that there was violation of terms and conditions of policy of insurance and as such they are not liable to pay the compensation as the vehicles were being run by the owner of the truck in contravention with the terms and condition of Insurance policy, as such they may be granted liberty to pay and recover the amount from the owners offending vehicle and on consideration of which tribunal has granted the liberty to pay and recover the compensation amount from the owners of the offending vehicle.

Learned counsel for the United India Insurance Company Limited has stated that Tribunal has wrongly fastened the liability of 50% to be paid by the United Insurance Company. It has been submitted that it was the offending vehicle insured by the Reliance which collided with the Truck on which deceased was travelling and owner of said vehicle is liable to pay the whole compensation amount. The contention of the United India Insurance company is correct. The counsel for

Reliance General Insurance Company was also unable to defend 50% of liability of payment of compensation upon United India Insurance Company by the Tribunal. As such the order for grant of compensation is modified to the extent that whole compensation amount is to be paid by the Reliance Insurance Company with a liberty that same could be recovered by him from the owner of the offending truck if there has been any violation of terms and condition of the Insurance policy the appeal is allowed to the extent as indicated above.

The Statutory amount of Rs.25,000/- deposited by the appellant- United India Insurance Company Limited may be refunded to the Insurance Company after a cheque being prepared and drawn in favour of United India Insurance Company and same to be handed over to the counsel for the appellant.

I.A. No.5362 of 2015 (in M.A. No.489 of 2014):

Heard.

This interlocutory application has been filed for condoning the delay of 3 months and 21 days in filing miscellaneous appeal.

For the reasons stated in the interlocutory application, this Court is satisfied that appellants were prevented for sufficient cause in filing the appeal within time, as such, the delay in filing the present appeal is condoned.

I.A. No.5362 of of 2015 stands allowed.

M.A. No.489 of 2014:

This miscellaneous appeal has been filed by the claimant against quantum of compensation granted by the Tribunal and enhancement of compensation amount.

It has been submitted that the Tribunal has applied a wrong multiplier and in terms of judgment of Hon'ble Apex Court, reported in [**2009(2) SCC 1546] Sarla Verma Case**, the Apex Court has provided a chart of multiplier for differential age group in which for the age group 21 – 25, applicable multiplier would be 18 whereas Tribunal has chosen the multiplier of 17. It has further been submitted that the Apex Court has fixed additional compensation of Rs.30,000/- under the head of funeral expenses and loss of estate and appellant is also entitled for the same.

After considering the submission made by the parties, this Court also finds that applicable multiplier in case of claimant-appellant should be 18 and in addition thereto, additional compensation of Rs.30,000/- is also required to be paid to them as such, the compensation awarded to the claimant is enhanced to the extent as indicated above. The claim of appellant with regard to future prospect cannot be allowed as the deceased was a daily wager employee and in such cases compensation in head of future prospect cannot be granted. The appellant has also submitted that Tribunal has assessed the annual income of deceased on the lower side, however, this Court does not find any error in assessing the annual income of the deceased by the Tribunal.

As a result, these appeals are partly allowed and respondent - Reliance General Insurance Company Ltd. is directed to pay the enhanced compensation amount of Rs.4,18,800/- to the claimant and United India Insurance Company Ltd. is absolved from the liability of paying any amount of compensation to the claimant. The compensation amount to be paid with 8 % interest per annum from the date of filing of application till its realization within two months from the date of receipt/production of a copy of this order.

The statutory amount of Rs.25,000/- deposited by the appellant - Reliance General Insurance Company may be paid to claimant and a cheque of Rs.25,000/- be prepared in the name of claimant and handed over to his counsel for its payment to the claimant.

Let the L.C.R. be sent back to the court concerned forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.06.2019
Transmission Date	NA