IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.362 of 2014

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Vijay Singh Son of Late Deonandan Singh Resident of Village-Bhuptipur, P.S.-Gaurichak, District-Patna.

... ... Appellant/s

Versus

1. Poonam Pandey Wife of Satrughan Pandey Residing at Andarkila, P.S.-Hajipur, District-Vaishali at present Choudhaty Tola, Patthar Ki Masjid, P.S.-Sutanganj, District-Patna.
2. Jang Bahadur Singh @ Jag Bahadur Singh Son of Ram Sagar Singh Resident of Village-Dighi, P.S.-Hajipur, District-Vaishali.
3. The Branch Manager, The Oriental Insurance Co. Ltd., Near Sadar Thana, Station Road, Hajipur, Distt. Vaishali.

... ... Respondent/s

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WITH

Miscellaneous Appeal No. 911 of 2016

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Poonam Pandey W/o Satrughan Pandey resident of Andar Kila Near Bharat Bharti School, P.S. - Hajipur, Dist - Vaishali.

... ... Appellant/s

Versus

1. Branch Manager, Oriental Insurance Co. Ltd. Near Sadar Police Station, Station Road Hajipur, Distt. Vaishali.
2. Vijay Singh S/o Late Deo Nandan Singh Vill - Bhupatipur, P.S. - Gaurichak, Distt. - Patna.
3. Jang Bahadur Singh @ Jag Bahadur Singh S/o Ram Sagar Singh Vill. -Dighi, P.S. - Hajipur Sadar, Distt. - Vaishali.

... ... Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 362 of 2014)

For the Appellant/s	:	Mr.Sudhir Kumar Bijpuria, Advocate
For Respondent No.1	:	Mr. Prashant Kumar, Advocate Mr. Sanjay Parasmani, Advocate
For the Respondent/s	:	Mr.Sanjay Singh, Advocate

(In Miscellaneous Appeal No. 911 of 2016)

For the Appellant/s	:	Mr.Prashant Kumar, Advocate Mr. Sanjay Parasmani, Advocate
For the Respondent/s	:	Mr.Bimlesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 18-11-2019

I.A. No. 9041 of 2015 in M.A. No.362 of 2014 and I.A. No.9044 of 2016 in M.A. No.911 of 2016

Heard the parties.

2. Both these interlocutory applications have been filed for condoning the delay in preferring the appeals.

3. For the reasons mentioned in the interlocutory applications, this Court is satisfied that the sufficient cause has been explained for not preferring these appeals within time.

4. As a result, both the interlocutory applications are allowed and the delay in filing both appeals is hereby condoned.

I.A. No. 9041 of 2015 and I.A. No. 9044 of 2016 are allowed.

M.A. No. 362 of 2014 and M.A. No. 911 of 2016

5. Miscellaneous Appeal No.362 of 2014 has been filed on behalf of claimant-appellant for enhancement of compensation amount awarded by the Motor Vehicles Accident Claim Tribunal-cum-District Judge, Patna by its judgment dated 18.08.2012 and Award dated 30.08.2012 passed in Claim Case

No.105 of 1993 by which the Claim Tribunal has awarded a sum of Rs.4,58,000/- (Four lacs fifty-eight thousand only) with interest @ 6 % per annum from the date of final argument of the parties and Miscellaneous Appeal No.911 of 2016 has been filed on behalf of the owner of the offending vehicle against the said Award by which the liability to pay compensation amount has been fastened upon the owner of the offending vehicle. Although on the date of accident, according to the owner of the vehicle, the offending vehicle had a valid insurance cover.

6. The claimant-appellant had filed a claim application before the Motor Vehicles Claim Tribunal by which he claimed a compensation of Rs.5,00000/- as he sustained injuries by the offending vehicle resulting in 90% permanent disablement. It is stated in the claim application that while claimant-appellant was going from his godown meanwhile on the road a bus bearing registration No.BPQ 9266 dashed against him, as a result of which he sustained serious injuries and become unconscious and the driver of the bus fled away with the bus. The offending bus was being driven in a rash, negligent and reckless manner. The claimant was taken to Patna Medical College and Hospital for his treatment where he was treated for different injuries and his femur bone was fractured and his left

leg was also amputated and he was discharged from the Hospital on 27.09.1993.

7. FIR was instituted giving rise to Traffic P.S. Case No.145 of 1993 and after investigation police submitted charge sheet against the driver of the offending vehicle for rash and negligent act.

8. The claimant claimed to be 40 years of the age on the date of accident and his monthly income was Rs.5,000/- per month. The offending bus was insured with the Oriental Insurance Company Limited.

9. Notices were issued by the Claims Tribunal to the Opposite Parties. Opposite Party No.1 is the owner and opposite Party No.2 is the driver of the offending bus. Opposite Party Nos.1 and 2 filed their written statement and stated that there was no negligent driving on behalf of the driver of the bus. It was further stated by them that the driver was having a valid driving licence and the bus was insured with the Oriental Insurance Company on the date of accident. They have also disputed the monthly income of the claimant as Rs.5,000/- per month.

10. Opposite party No.3, the Oriental Insurance Company, filed their separate written statement in which it has

been stated that on the date of accident dated 29.08.1993 the vehicle was not insured as the amount of premium paid by the owner of the vehicle by the Cheque was dishonored and, subsequently, premium was deposited in cash on 30.08.1993. The owner of the offending bus had issued a Cheque dated 04.08.1993 on which cover note No.87327 dated 04.08.1993 was issued but that was subject to the encashment but said cheque was dishonoured by the bank, as such, on the date of accident dated 29.08.1993 vehicle was not insured, as such, there is no liability of the Insurance Company to indemnify the owner of the vehicle from payment of compensation amount.

11. On the basis of the rival contention of the parties, the Claim Tribunals framed five issues for determination. In support of his claim the claimant examined seven witnesses and have also produced 12 documents which have been marked as exhibit by the Tribunal; whereas Opposite Party No.1, the owner of the vehicle, has also produced documents. Exhibit A is power of attorney. Exhibit B is the money receipt dated 04.08.1993 issued by the Oriental Insurance Company Limited, Exhibit-C is Insurance Policy and Exhibit-D is the money receipt of cash dated 30.08.1993.

12. On the basis of the evidences produced, the

Claims Tribunal held that due to rash and negligent driving of the vehicle by the driver accident took place and claimant met with an accident sustaining grievous injury and on account of the said accident his left leg got amputated resulting in permanent disablement of the claimant. The Oriental Insurance Company had pleaded before the Claims Tribunal that on the date of accident the vehicle was not insured and prior to date of accident a cheque for the payment of premium was issued by the owner of the vehicle, which was not encashed till the date of accident as said cheque was dishonoured and subsequently the owner of the vehicle paid the premium in cash on 30.08.1993 although accident took place on 29.08.1993, as such, on the date of accident the vehicle was not insured and they are not liable to pay the compensation.

13. The Tribunal has held that on the date of accident i.e., 29.08.1993, the vehicle was not insured with Oriental Insurance Company, as such, Insurance Company is not liable to pay any compensation and the owner of the vehicle is liable to pay the compensation.

14. The Tribunal has found the age of claimant to be 40 years on the date of accident and has assessed the monthly income of the claimant to be Rs.1500/- per month and

Rs.18,000/- per annum and has applied multiplier of 15 and has work out the compensation amount to be Rs. 2,70,000/-. The Tribunal has further ascertained medical expenses as one lac and has granted compensation under the head for pain and suffering as rupees one lac and has worked out the compensation to be Rs.4,70,000/- and deducted Rs.12,000/- which was paid as ad interim compensation and quantified the amount of compensation as Rs.4,58,000/- which is to be paid by the owner of the vehicle. The Tribunal has granted 6% interest from 22.11.2004 from the date the argument was advanced by all the parties till its payment.

15. Aggrieved by judgment and Award passed by the Claims Tribunal, the owner of the offending vehicle as well as claimant have filed these miscellaneous appeal for the reason that owner is not liable to pay compensation as on the said date of accident the vehicle had valid insurance coverage and the claimant has filed appeal for enhancement of compensation amount as his monthly income was wrongly assessed by the Tribunal.

16. In support of his monthly income claimant has been examined as witness no.2 in which he has stated that on the date of accident he was 40 years old and was engaged in the

business of stone chips from which he had monthly income of Rs. 5,000/- per month. He used to procure orders from customers on scooter but after accident he cannot ride scooter and his earning has been reduced to Rs. 1,000/- per month. He was cross-examined on behalf of opposite party no.1 the owner of the vehicle and in his cross-examination he has stated that he used to do business of stone chips from Rajendra Nagar godown. Rajendra Nagar godown belonged to railways and the land has been settled to him by the railways. He has given the vivid description of the land which was allotted to him by the railways. He used to supply the stone chips after procuring the order from the customers.

17. Witness No.2 Kishore Kumar Singh in his examination-in-chief has stated that claimant Vijay Kumar Singh is known to him for last 10-15 years who is engaged in business of stone chips at Rajendra Nagar godown. He is supplying to him stone chips for last 10-15 years. There was saving of Rs. 50/- per tractor. He used to supply 10-12 tractor of stone chips by placing order to the claimant from his godown. He used to bring stone chips from railways and truck.

18. Witness No.6 Nageshwar Singh has also supported the claim of the claimant that he used to earn Rs. five

thousand from business of stone chips.

19. After hearing the counsel for the parties and considering the materials available on record particularly with respect to the monthly income of the claimant it appears that claimant has adduced oral evidence with respect to his monthly income that he was earning Rs. 5,000/- per month in business of supply of stone chips.

20. Witness nos.1, 3, 5 and 6 have supported the claim of claimant with respect to his monthly income. They have been cross-examined by the other side particularly the owner of the vehicle but there is nothing in the cross-examination to disbelieve the monthly income of claimant. Claim of the claimant is that he was earning Rs. 4000/- cannot be discarded. Claim cannot be regarded being unreasonable or contrary to realistic assessment, as such, this court assesses the monthly income of claimant to be Rs. 4,000/- per month. The appellant and other witnesses have stated that subsequent to accident his earning has been reduced to Rs. 1000/- per month, as such, there is loss of earning of Rs. 3,000/- per months and the compensation is to be assessed on said amount.

21. In view of the law laid down by the Apex Court in ***Sarla Verma and Others Vs. Delhi Transport***

Corporation and Another *reporter in* **(2009) 6 SCC 121** the multiplier of 15 has been correctly applied by the claims tribunal and the loss of earning of claimant is assess as Rs. 36,000/- p.a.

22. The claims tribunal has absolved the Insurance Company from liability to pay the compensation amount on the ground that the premium paid by the cheque by the owner of the offending vehicle was dishonored by the bank due to insufficient fund and as such, on the date of accident the offending vehicle was not covered by the Insurance Policy. Similar issue was considered by the Apex Court in case of United India Insurance Company Ltd. Vs. Laxmamma and Others since reported in 2012 (3) T.A.C 8 (S.C.) and para 19 and 20 are quoted below:-

> 19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonored, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the

provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such Insurance Company cancels the policy of insurance and sends intimation thereof to the owner, the Insurance Company's liability to indemnify the third parties which that policy covered ceases and the Insurance Company is not liable to satisfy awards of compensation in respect thereof.

20. Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period 16th April, 2004 to 15th April, 2005 for which premium was paid through cheque on 14th April, 2004. The

accident occurred on 11th May, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13th May, 2004 on the ground of dishonor of cheque which was received by the owner of the vehicle on 21st May, 2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants.

23. In present case Insurance Company in their written statement has nowhere stated that pursuant to dishonour of cheque insurance policy was cancelled and cancellation of insurance policy was communicated to insured, as such, present case is fully convered by case as referred above and insurance company is liable to pay the compensation amount with right of recovery.

24. The compensation amount for which claimant/appellant is entitled is re-assessed as follows:-

Loss of income per annum:-	Rs. 36,000/-
Multiplier:-	Rs. 15
Compensation amount:-	Rs. 5,40,000/-
Medical expenses:-	Rs. 1,00,000/-

Pain and suffering:- Rs. 1,00,000/-

Loss of amenities:- Rs. 1,00,000/-

Total:- Rs. 8,40,000/-

(Rs. eight lacs forty thousand)

25. Claimant is entitled for compensation of Rs. 8,40,000/- (Rs. eight lacs forty thousand) with interest @ 6% p.a. from the date of application till its realization. The award passed by the claims tribunal is modified to said extent Insurance Company is directed to pay the compensation amount after deducting the compensation amount already paid to the claimant within two months from the date of receipt/production of a copy of order passed by this Court.

26. Insurance Company shall be at liberty to prosecute its remedy to recover the compensation amount paid to the claimant from the owner of the offending vehicle in accordance with law.

27. Miscellaneous Appeal is disposed of.

(S. Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2020
Transmission Date	07.02.2020