IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.214 of 2014

==

1. United India Insurance Company Limited through

(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, 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
Resident of Village- Shambhupatti, P.S. Mahua, Dist. Vaishali.
Claimant / Respondent

2. Saizar Enterprises Pvt. Ltd, Transport Nagar Campus, Dimna Road, Mango, Jamshedpur, Dist. Singbhum East, Jharkhand, (Owner of NL.05D.4249)
…. OP-1/ Respondent

3. Kesava Rao S/O V. Venkataramaiah
32/1384, 5th Street, J V R Colony, Podalakur Road, Dist. Naillore, Andhra Pradesh (Owner of AP.26W.9176) .OP-3 / Respondent

4. Reliance General Insurance Co. Ltd. through Manager (Legal), Reliance General Insurance Co. Ltd. Himalaya House, 8th Floor, 38 Bjawahar Lal Nehru Road, Kolkata-700071 ……. O P -4 / Respondent

... ... Respondent/s

==

with

Miscellaneous Appeal No. 511 of 2014

==

Md. Serajuddin, son of Late Abdul Hakeem, resident of Sembhopatti, P.S.- Mahua, District- Vaishali
(Claimant in the Claim Case)

... ... Appellant/s

Versus

1. Saizar Enterprises Private Limited, Transport Nagar Campus Dimna Road, Mango, Jamshedpur, District- East Sihbhum, 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, Branch Manager, Tobacco House, 3rd Floor , Old Court House Corner, Kolkata- 700001. (Opp Party No.2 in the Claim Case)
(Insurer of Truck bearing No. NL-05D/4249)

3. Kesava Rao son of V. Venkataramaiah, 32/1384, 5th Street, J.V.R. Colony, Kodalakur road, district - Nellore, Andhra Pradesh. (Opp. Party No.-3 in the

Claim Case)
(Owner of Lorry No. AP-26W/9176)

4. Reliance General Insurance Company Limited through its Manager Legal, Himalaya House , 8th Floor, 38-B, Jawahar Lal Nehru Road, Kolkatta-700071
(Opp. Party No.-4 in the Claim Case)
(Insurer of Lorry No.AP-26W/9176)

... ... Respondent/s

==

with

Miscellaneous Appeal No. 257 of 2014

==

Reliance General Insurance Company Limited, through its Manager, Himalaya House, 8th Floor, 38 B, J.L. Nehru Road, Kolkatta-700071, West Bengal

... ... Appellant/ Opposite Party No.4

Versus

1. Md. Serajuddin, Son of Late Abdul Hakim, R/o Village Shambhupatti, P.S. Mahua, District Vaishali
…..Respondent / Claimant No.1
2. Saizar Enterprises Pvt Ltd, resident of Transport Nagar Campus, Dimna Road Maango, Jamshedpur, East Singhbhum, Jharkhand-831012
...Respondent / Owner O.P. No.1
3. United India Insurance co Ltd.
(A) Through Branch Manager, United India Insurance Co. Ltd Ramashish Chowk, Hajipur, resident of Mohari Asthan, P.S. Sasaram, District- Rohtas
(B) Through Branch Manager, United India Insurance Co. Ltd, Tobacco House, third floor, Old Court House Corner, Kolkatta - 700001
4. Keshav Rai Son of V. Venkat Ramaiyya, 32/1384, 5B Street JUR Colony, Kodalakur Road, District Nellore, Andhra Pradesh
... ... Respondent/ Owner O.P. No.3

==

Appearance :
(In Miscellaneous Appeal No. 214 of 2014)
For the Appellant/s : Mr.Durgesh Kumar Singh, Advocate
For the Respondent/s : Mr. A. K. Shahi
Mr. Rajen Sahay
Mr. Gajendra Kr. Jha, Advocates
(In Miscellaneous Appeal No. 511 of 2014)
For the Appellant/s : Mr.Rajen Sahay, Advocate
For the Respondent/s : Mr.A. K. Shahi
Mr. Durgesh Kumar Singh
Mr. Gajendra Kr. Jha, Advocates
(In Miscellaneous Appeal No. 257 of 2014)
For the Appellant/s : Mr.Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent/s : Mr. Durgesh Kumar Singh
Mr.Rajen Sahay,
Mr. Gajendra Kr. Jha, Advocates

==

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 02-08-2019

<u>I.A. No.165 of 2015 (M.A. No.214 of 2014), I.A. No.6233 of 2015 (M.A. No.511 of 2014) and I.A. No.4173 of 2015 (M.A. No.257 of 2014):</u>

Heard.

These interlocutory applications have been filed for condoning the delay in filing respective miscellaneous appeals.

For the reasons stated in the petitions, this Court is satisfied that appellants were prevented for sufficient cause in filing the appeal within time, as such, the delay in filing all three appeals, i.e. ,M.A. No.214 of 2014, M.A. No.511 of 2014 and M.A. No.257 of 2014 are condoned.

I.A. No.165 of 2015 (M.A. No.214 of 2014), I.A. No.6233 of 2015 (M.A. No.511 of 2014) and I.A. No.4173 of 2015 (M.A. No.257 of 2014) stand allowed.

<u>M.A. No.214 of 2014, M.A. No.511 of 2014 and M.A. No.257 of 2014:</u>

Heard parties.

2. Miscellaneous Appeal No.214 of 2014 has been filed on behalf of United India Insurance Company Ltd. whereas, Miscellaneous Appeal No. 257 of 2014 has been filed on behalf of Reliance General Insurance Company Ltd. and

Miscellaneous Appeal No.511 of 2014 has been filed on behalf of claimant against the judgment dated 01.10.2013 and Award dated 28.10.2013/14.05.2014 passed by learned ad hoc Additional District Judge-II-cum- Motor Accident Claims Tribunal, Hajipur, Vaishali passed in Claim Case No.17 of 2011.

3. Briefly stated the facts of the case is that claimant Md. Serajuddin aged about 60 years was driving Truck No.NL-05D 4249 of Saizar Enterprises Private Limited and was going to Bangalore from Jamshedpur and as his truck reached Nellore when another truck AP-26 W 9176 which was coming from behind and was being driven in a rash and negligent manner dashed against the truck of claimant from behind as a result of which cleaner of the truck which was being driven by the claimant suffered serious injury and died on the spot whereas, claimant also suffered grievous injury and was taken to hospital and became permanently disabled and eyesight of right eye was lost and eyesight of left eye was diminished and he was granted 50 % disability certificate by the doctor. On account of permanent disability, he was unable to drive the vehicle and also needed one attendant for his movement.

4. Claimant filed claim case no.17 of 2011 under

Section 166 of the Act seeking compensation of rupees Eight Lacs against the owner and insurer of the offending vehicle. Notices were issued to the opposite parties. Insurer of both the vehicles appeared and filed their written statement, however, owner of both the offending vehicles did not appear before the Tribunal in spite of valid service of notices and claim case proceeded *ex parte* against them.

5. Claimant/appellant had suffered injury in his eyes and he became 50 % disable for which disability certificate was issued by the competent authority. The claimant received salary of Rs.4,500/- per month and was also granted allowance of Rs.150/- per day and claimed Rupees 8 lacs as compensation on account of disability and loss of earning on account of said accident.

6. In their written statement, United Indian Insurance Company stated that on the date of accident, claimant Md. Serajuddin was not driving Truck No.NL-05D / 4249 and he was suffering from cataract and was unable to see and he was aged above sixty years and has procured the disability certificate in connivance with Doctor. F.I.R. was instituted against the driver of vehicle No. AP 26W 9176 as such, United India Insurance Company is not liable to pay the compensation

amount.

7. Reliance General Insurance Company in their written statement has stated that on the date of accident, driver of Vehicle No. AP 26 W 9176 had no valid and effective driving licence and as such there was violation of terms and conditions of the insurance policy as such, they are not liable to pay the compensation amount. The accident took place due to rash and negligent driving by drivers of both vehicle as such, they are not only liable to pay the compensation amount.

8. In support of his claim case, the claimant has examined himself as witness no.1 and has also filed documentary evidence. F.I.R. is Ext. 1 and Final report is Ext. 2. The tribunal has held that due to rash and negligent driving by driver of both vehicles accident took place resulting in permanent disability of the claimant and he has lost his vision completely in one of the eyes and vision of the second eye has also diminished to a great extent and he is not in a position to drive the vehicle. The disability certificate granted by |Civil Surgeon, Hajipur is marked as Ext. 3 showing 50 % disability. The Tribunal has held that claimant has suffered permanent disability due to aforesaid accident. The Tribunal has assessed the annual income of claimant to be Rs.54,000/- and on the date

of accident, the offending trucks were insured against third party as such, they are liable to pay compensation to the claimant as he suffered permanent disability in aforesaid accident on account of rash and negligent driving by drivers of the offending vehicle and both the insurance company are liable to pay 50% of the compensation amount. The Tribunal has assessed the annual income of claimant to be Rs.54,000/- and has found that he has suffered 80% of loss of earning and has ascertained Rs.43,200/- as annual loss of earning. The age of claimant is 60 years and according to Schedule II the appropriate multiplier will be 5 and has assessed amount of compensation to be Rs. 2,16,000/- and has further granted additional compensation of Rs. 4,500/- for pain and mental agony and total compensation amount has been ascertained to be Rs.2,20,500/- which is to be paid by both the insurance companies in equal proportion.

9. Counsel for the appellant - United India insurance company has submitted that Tribunal has wrongly fastened the liability of payment of 50% compensation on it as the offending vehicle was insured by the Reliance General Insurance Company and the claimant was third party for the said vehicle and, as such, only Reliance General Insurance Company

is liable to pay the compensation amount. The counsel appearing on behalf of Reliance General Insurance Company could not contradict or controvert said submission even otherwise, claimant is entitled to claim compensation from any of the insurance company as liability to pay the compensation is joint and several. Accordingly, United India Insurance Company Ltd. is absolved from the liability of paying 50 per cent compensation and Reliance General Insurance Company Ltd. is directed to pay the entire compensation amount with interest @ 8% per annum from the date of filing of claim petition till its realization. It has been contended by learned counsel for Reliance General Insurance Company Ltd., that injury report does not support the claim of claimant of sustaining injury and there is contradiction between injury claim and injury report as furnished by the appellant, however, this Court does not find any such material contradiction between the injury sustained by the claimant as well as medical report submitted by the claimant as his both of the eyes were damaged in the accident.

10. Claimant has filed M.A. No.511 of 2014 for enhancement of compensation amount and according to counsel for the appellant the correct multiplier would be 9 and 10%

future prospect is to be granted besides additional compensation for pain suffering and loss of amenities, extra nourishment, attendant and future medical expenses as well as expenses met on medical treatment requires to be granted.

11. Accordingly, the compensation of claimant is reassessed by this Court which is as follows:

Loss of earning		- Rs. 43,200/-
Multiplier		- 9
Loss of earning		-Rs. 3,88,800/-
Future prospect	(10%)	- Rs. 38,880/-
Total loss of earning		- Rs. 4,27,680/-

In addition to it, claimant-appellant is granted Rs. 2 Lacs as lump sum compensation for pain, suffering and loss of amenities, extra nourishment, attendant and for past and future medical expenses.

12. In the result, M.A. No. 214 of 2014 filed on behalf of United India Insurance Company is allowed, M.A. No.257 of 2014 filed by Reliance General Insurance Company Ltd. is dismissed and M.A. No.511 of 2014 is partly allowed.

13. Reliance General Insurance Company Ltd. is directed to pay compensation of Rs. 6,27,680/-(Rupees Six Lacs Twenty Seven Thousand Six Hundred Eighty) with interest @ 8

per cent per annum from the date of filing of claim application till its realization.

All three miscellaneous appeals stands disposed of.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	09.05.2019
Uploading Date	02.08.2019
Transmission Date	NA