

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.807 of 2014

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The Branch Manager, National Insurance Company Ltd. Varanasi ,
Represented through the Chief Regional Manger and the constituted Attorney,
Regional Insurance Comp. Ltd. 4th Floor, Sone Bhawan, B.C. Patel Marg, P.S.
Sachivalaya, District- Patna

... .. Appellant/s

Versus

1. Kanti Devi @ Kanti Kunwar @ Shila Devi Wife of Late Ganesh Tiwari.
2. Prabha Kant Tiwari @ Mantu Tiwari.
3. Hira Tiwari @ Hiralal Tiwari.

Respondent no. 2 and 3 are son of Late Ganesh Tiwari.

All resident of village - Ganua, P.O.- Brawkala, P.S.- Darihat, Dist.- Rohtas.

4. Upendra Kumar Singh, S/o Shri Krishna Bhagwan Singh, Resident of
village P.O. P.S.- Saiyad Raza, Dist.- Chandauli U.P. presently residing at
village - Pandey Dehariya, P.O.- Sukul Pipra Mohalla, P.S.- Mohania, Dist.-
Kaimur Bihar (Owner of Pick up van UP-67/T-2383).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Raj Kumar Singh Vikram, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 25-06-2019

I.A. No. 6988 of 2015

Heard.

This interlocutory application has been filed for
condoning the delay of 26 days in preferring the present
appeal.



For the reasons mentioned in this interlocutory application, this Court is satisfied that the appellant was prevented for sufficient cause from preferring this miscellaneous appeal within time.

As a result, this interlocutory application is allowed and the delay in filing this miscellaneous appeal is condoned.

M.A. No.807 of 2014:

Heard.

2. Aggrieved by judgment dated 12.03.2014 and Award dated 20.08.2014 passed by 1st Additional District Judge-cum- Motor Vehicle Accident Claims Tribunal Rohtas at Sasaram in Claim Case No. 27 of 2012 by which the learned tribunal has directed the appellant insurance company to pay compensation to the claimant although offending vehicle was being driven by driver who had no valid and effective driving licence.

3. Briefly stated facts of the claim case as disclosed in claim petition is that claimants are widow and children of Ganesh Tiwary, who along with claimant no.1 and Akhilesh Maowar owner of the motorcycle were coming on motorcycle when a pick-up van bearing registration no. UP-67T-2383 which was being driven in a rash and negligent



manner dashed against the motorcycle as a result of which Ganesh Tiwary was seriously injured and died during treatment.

4. F.I.R. was instituted giving rise to Darihat P.S. Case No. 01 of 2012 under Section 279, 337, 338, 304-A and 427 of the Indian Penal Code against the driver of the offending vehicle and after completing investigation the police found the case to be true against driver of the offending vehicle of driving the vehicle in a rash and negligent manner causing accident resulting into death of deceased and submitted charge-sheet against the driver of the offending vehicle.

5. Notices were issued to opposite party no.1, the owner of the vehicle, which was validly served upon him but he did not appeared and claim case proceeded ex parte against him. Opposite party no.2 National Insurance Co. Ltd. appeared and contested the matter.

6. Written statement has been filed on behalf of insurance company in which they have denied their liability to pay the compensation as there was violation of terms and conditions of insurance policy as the driver of the offending vehicle was not having valid and effective driving license on the date of accident.

7. On pleading of the parties, the tribunal framed



four issues for its determination. In support of her claim case three witnesses were examined on behalf of claimant who have supported the case of claimant. Apart from oral evidence, documentary evidence has also been adduced on behalf of claimant which has been marked as Exhibits by the claims Tribunal. Ext- 2 is the F.I.R., Ext- 3 is the chargesheet submitted against the driver of the offending vehicle, Ext- 4 is the post mortem report, Ext- 5 is the insurance policy, Ext-6 is the registration certificate and on the basis of oral and documentary evidence, the tribunal has held that driver of the offending vehicle was driving the vehicle in a rash and negligent manner as a result of which accident took place and deceased got seriously injured and died during treatment. The tribunal has further held that on the date of accident the offending vehicle was insured with the insurance company as such insurance company is liable to pay the compensation amount.

8. The tribunal has assessed the age of deceased as 60 years and his income to be Rs. 9,000/- per month which will be Rs. 1,08,000/- (one lac eight thousand) per annum. Tribunal has deducted 1/3rd as his personal expenses and has applied 8 as multiplier and has ascertained the total compensation amount to be Rs. 5,38,250/- and has directed the



insurance company to pay the compensation amount with 7% interest per annum. The tribunal has already granted liberty to the insurance company to recover the compensation amount from the owner of offending vehicle if there is any violation of terms and conditions of insurance policy after making payment to the claimant.

9. The counsel for appellant has submitted that three persons were sitting on the motorcycle as such there was contributory negligence on part of deceased as such compensation amount should be reduced to the extent of contributory negligence. Contributory negligence is needed to be pleaded and proved. Only because on motorcycle, three persons were sitting, contributory negligence cannot be inferred unless it is established that triple loading contributed in motor accident. Police has also not found any negligence by rider of motorcycle.

10. This court does not find any error or infirmity in the order passed by the claims tribunal and tribunal has already granted liberty to recover the compensation amount from the owner of the offending vehicle after making payment to claimant, as such, no further liberty requires to be granted by this court.



11. Accordingly, this miscellaneous appeal is
disposed of.

(S. Kumar, J)

Rajiv/-

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

