IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.654 of 2008

==

1. The Divisional Manager, The New India Assurance Company Kanpur.
2. The Branch Manger, The New India Assurance Company Limited, Bhagalpur through the Regional Manager the New India Assurance Company Ltd. BSFC Building Frazer Road, Patna-1

... ... Appellant/s

Versus

1. Urmila Devi, W/o Patwari Mandal @ Jailal Mandal, resident of Madronil, P.S. Gopalpur, District- Bhagalpur,
2. Uttamjeet Kumar @ Uttamjeet Kaur, W/o Sri Manmohan Singh, resident at 119/526, Kaushalpuri, Kanpur
3. Rajendra Singh, S/o Hardeep sSngh, resident of 109/113, Nehru Nagar, District- Kanpur.

... ... Respondent/s

==

Appearance :

For the Appellant/s : Mr.Bimlesh Kumar Jha, Adv.

For the Respondent/s : Mr.Rajesh Kumar, Adv.

==

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 02-09-2019

I.A. No. 156 of 2009:

Heard.

This interlocutory application has been filed for condoning the delay of 2 months and 16 days in preferring the present appeal.

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

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

M.A. No.654 of 2008:

Heard the parties.

2. This miscellaneous appeal under Section 173 of Motor Vehicle Act has been filed by the appellant/insurance company against the judgment dated 30.04.2008 and Award dated 09.05.2008 passed by A.D.J. (F.T.C)-cum-Motor Vehicle Accident Claims Tribunal, Bhagalpur in Claim Case No. 101 of 2000, by which the appellant has been directed to make payment of Rs. 3,30,900/- (rupees three lacs thirty thousand nine hundred) as compensation with interest @ 8 % per annum from filing of the claim case till its payment.

3. Claimant (mother of deceased) has filed the claim case before the Claims Tribunal for grant of compensation on account of death of Ashok Kumar in a motor accident on 13.09.1999 by truck bearing registration No. UP78N-9617. Uttamjeet Kaur, owner of the offending vehicle was made opposite party no.1 and Rajendra Singh, driver of the offending vehicle was made opposite party no.2 and the vehicle was insured with the appellant insurance company which were arrayed as opposite party nos. 3 and 4 before the Tribunal.

4. F.I.R. was instituted giving rise to Gopalpur P.S. Case No. 141 of 1999 under Section 279 and 304-A of the Indian Penal Code against the driver of the offending vehicle and after investigation police found the case to be true against the driver and submitted chargesheet against him. The age of deceased was 22 years and tribunal has assessed monthly income of deceased as Rs. 2,400/- per month.

5. The tribunal has quantified the compensation amount as Rs. 3,26,400/- and thereafter added Rs. 4,500/- for loss of estate and funeral expenses and has quantified total amount of compensation as Rs. 3,30,900/-. Rs. 50,000/- has already been paid as interim compensation, as such, tribunal has directed the New India Insurance Company to make payment of Rs. 2,80,900/- with interest @ 8% per annum to the claimants from the date of filing of application till the date of realization.

6. It has been submitted on behalf of appellant/insurance company that the truck was plying without any valid permit as such there was fundamental breach of terms and conditions of insurance policy and as such insurance company is not liable to indemnify the owner of the offending truck. Neither such plea was taken by the insurance company

before the claims tribunal nor in their written statement filed before the claims Tribunal. No such issue was framed by the tribunal nor any evidence was led by the parties on the said issue. If there is any violation or breach of terms and conditions of insurance policy, then it has to be raised and pleaded before the claims tribunal, upon which, the tribunal has to frame issue and parties are given opportunity to lead evidence. However, no such ground was taken by the insurance company before the tribunal nor the tribunal had framed any such issue nor parties have led any evidence on this issue, as such, said ground is not permissible or available to the insurance company to be raised for the first time in appeal before the High Court.

7. After hearing the parties and considering the judgment and award passed by the claims tribunal, this court does not find any error or infirmity in the order passed by the claims tribunal. There is no merit in this miscellaneous appeal and accordingly same is dismissed.

8. The statutory amount deposited by the New India Assurance Company Ltd. at the time of filing of Appeal for which a cheque of Rs. 25,000/- (Rupees twenty five thousand) is directed to be prepared in the name of claimant no.1 and sent to the concerned Tribunal for its payment to the

claimants which shall be adjusted in compensation amount to be paid to the claimants.

(S. Kumar, J)

Rajiv/-

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