IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.932 of 2017

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The Branch Manager, The New India Assurance Company Ltd, Indian Life Building, Tower-11, Lane-15, Parliament Bhawan, New Delhi.

... ... Appellant/s

Versus

1. Mahesh Shah, S/o Butai Shah, Gram + Post- Vikrampur, Thana- Muffasil, District- Samastipur.
2. Chaman Lal, S/o Phakir Chand 78b, Ramesh Nagar, New Delhi (Vehicle Owner, Bus no- DRB- 628)
3. Pravin, S/o S.C.Sharma, House No. B-1316, Shastrinagar, Saray Rohila, Delhi. (Bus Driver, Bus No. DRB-628)

... ... Respondent/s

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 26-08-2019

<u>I.A. No. 5366 of 2018</u>

This application has been filed under Section 5 of the Limitation Act for condoning the delay in filing miscellaneous appeal against the judgment dated 29.09.2016 passed by claims tribunal, Samastipur in Claim Case No. 11 of 2002.

Sufficient reasons have been shown in the application to condone the delay in filing the appeal against the order of Claims Tribunal, as such, delay in filing the appeal is condoned.

I.A. No. 5366 of 2018 is hereby allowed.

Miscellaneous Appeal No. 932 of 2017

Heard the parties.

2. This miscellaneous appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 by the appellant/The New India Assurance Co. Ltd. for setting aside the judgment dated 29.09.2016 and award dated 07.12.2016 passed by Additional District Judge 2nd-cum-MACT, Samastipur in Claim Case No. 11 of 2002 by which the claims tribunal has awarded compensation of Rs. 5,18, 400/- with 6% interest from the date of filing the claim application till its payment to the claimant.

3. Claimant-Mahesh Shah filed a claim petition under Section 166 of M.V. Act 1988 for grant of compensation on account of permanent disability suffered by him in a motor accident. It has been stated that on 07.09.1997 at 10:30 P.M. due to rash and negligent driving by the driver of Bus No. DRB-628, claimant met an accident and suffered serious injuries and was hospitalized for treatment and became 60 % permanent disabled.

4. F.I.R. was instituted giving rise to Anand Vihar P. S. Case 250 of 1997 under Sections 279 and 338 of I.P.C. in which chargesheet was submitted against the driver of the offending vehicle. Claimant is aged about 32 years and earned Rs.

7000-8000/- per month and had to bear medical expenses of Rs. 50,000/- for his treatment and claimed compensation Rs. 1.5 lacs.

5. Appellant/The New India Assurance Co. Ltd. was opposite party no. 3 before the claims tribunal and stated therein that claimant suffered injures in an accident in Delhi however claim case has been filed in Samastipur as such same is not maintainable. Insurance company also took plea that necessary documents with respect to offending vehicle i.e. route permit, tax token, driving license and fitness certificate have not been filed on behalf of the appellant as such they are not liable to pay any compensation.

6. The tribunal on the basis of oral and documentary evidence has held that accident took place due to rash and negligent driving by the driver of the offending vehicle as a result of which claimant suffered serious injuries and became permanent disabled to the extent of 60 per cent. The offending vehicle was insured with the New India Assurance Co. Ltd. on the date of accident as such insurance company is liable to pay the compensation amount. The tribunal has assessed income of claimant to be Rs. 150/- per day, Rs. 4500/- per month and Rs. 54,000/- per annum and has applied multiplier of 16 and loss of earning comes to Rs. 8,64,000/- and since disability is 60 per cent

has found claimant to be entitled for compensation of Rs. 5,18,400/- with interest @ 6 % per annum from the date of application to the date of payment.

7. Appellant are aggrieved by the assessment of claims tribunal with respect to income of claimant and it is submitted that same is on higher side and since there was no documentary evidence of his income the tribunal ought to have assessed Rs. 3,000/- income as per month however, this court does not find that the assessment of the income of the claimant by the tribunal is on higher side. The claimant had claimed that he used to earn Rs. 7000 - 8000/- per month by sale of vegetables in Delhi and assessment of Rs. 4,500/- per month is realistic and reasonable and cannot be said to be on higher side, as such, this court does not find any error or infirmity in the order passed by the Claims Tribunal, accordingly, the appeal filed by the appellant-Insurance company is dismissed.

8. Statutory amount of Rs. 25,000/- which was deposited by the appellant-insurance company may be refunded to the appellant-insurance company through electronic mode for which format will be provided by the office to the counsel for the appellant-insurance company who shall submit the format after filling it giving necessary information required in said format to

enable the office to remit the amount through electronic mode into the account of insurance company.

(S. Kumar, J.)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.11.2019
Transmission Date	NA