

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1209 of 2016

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The Divisional Manager, New India Assurance Company Limited Appeal and Appellant through the Deputy Manager/authorized signatory/Duly Constituted Attorney, New India Assurance Company Limited, Regional Office, 6th Floor, BSFC Building, Frazer Road, Patna.

... .. Appellant/s

Versus

1. Sona Devi w/o Lt. Vijay Yadav
2. Prince Kumar s/o Lt. Vijay Yadav
3. Vikas Kumar s/o Lt. Vijay Yadav
4. Ashish Kumar s/o Lt. vijay Yadav
5. Puja Kumari d/o Lt. Vijay Yadav All the above are residents of village - Bhaluachatti, P.S. - Barachatti, Dist. - Gaya Bihar.
(Respondent Nos. 02 and 05 are minor under the guardianship of mother, Respondent No. 01.)
6. Charan Singh s/o Sri Karnali Singh Resident of Plot no. 71, Transport Nagar, Ludhiana Punjab, Owner.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Durgesh Kumar Singh, Advocate
For the Respondent/s : Mr. Gyanendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 24-11-2022

I.A. No. 01 of 2022

The aforesaid interlocutory application has been filed for condoning the delay of 15 days.

2. In view of the averments made in the interlocutory application, the 15 days delay in filing the appeal stands condoned.

3. The Interlocutory Application No. 01 of 2022 stands allowed.



M.A. No. 1209 of 2016

The New India Assurance Company Limited (henceforth for short “the New India”) has challenged the judgment and order dated 31.03.2016 and the Award dated 18.06.2016 passed by the learned 1st Additional District Judge cum Motor Accident Claim Tribunal, Gaya (henceforth for short “the Tribunal”) in M.A.C. Case No. 69 of 12/17 of 2012 by which the claim of the applicants-respondents were allowed with a further direction to “the New India” to pay the compensation amount of Rs. 22,89,360/- along with interest of 9 percent from the date of filing of the suit till the date of payment.

2. The matrix of facts given rise to the present appeal is/are as follows :-

3. On 24.01.2012, a truck bearing Registration No. PB-10DB-6405 was moving towards Kolkata when it dashed Vijay Yadav, the husband of the Applicant No. 1, Sona Devi. In the said accident, the head of the deceased came under the wheel of the truck which resulted into his death. This led to institution of Barachatti P.S. Case No. 31 of 2012 under Sections 279 and 304A of the Indian Penal Code lodged by his brother-informant on 25.01.2012.



4. The admitted fact in the present case is that the deceased was a contractor having tractor, JCB machine and was also having house rent and was an income tax payee having IT return for the said period. He was 28 years of old was having agricultural land. Further as per the IT Returns 2011-2012, he had shown his yearly income as Rs. 2,19,315/- per annum.

5. The lady, Sona Devi along with her children became claimants by filing the M.A.C. Case No. 69/2012/17/2012 before “the Tribunal”, Gaya.

6. The claim of “the New India” was/were that :

(i) no information was given about the said accident;

(ii) section 226(5) of the Motor Vehicle Rules 1992 (for short “the Rules”) was not followed;

(iii) thus, the liability should have been on the owner;

(iv) the driver was not made party;

(v) unless the driver confirmed the accident/death, “the New India” is not liable.

7. The stand of the truck owner on the other side was/were that:

(i) the truck was not seized at the spot. Only the registration number was



taken note in the FIR;

(ii) charge sheet was submitted against the driver;

(iii) the truck was insured with “the New India” vide Policy No. 506031 and the same was valid between 16.03.2011 to 15.03.2012 with third party risk and as such, at the time of the accident, the truck was under valid insurance;

(iv) the driver had valid driving license:

(v) in that case, the compensation has to be indemnified by “the New India”.

9. “The Tribunal” framed the following issues:

- (i) did the accident occurred?;
- (ii) was the truck insured?;
- (iii) was the deceased had filed I.T. returns?;
- (iv) are the applicants entitled for compensation?.

10. The applicants-respondents in support of their claim produced witnesses as also filed exhibits which included the copies of I.T. returns acknowledgment (Ext-1), the FIR (Ext-2), the post-mortem report (Ext-3), the insurance policy (Ext-4) and the Pan Card (Ext-6).

11. “The Tribunal heard the parties at length and



then came to the following conclusion :

(i) so far as Issue No. 1 is concerned, it held that the claim case is maintainable.

(ii) on the Issue No. 5 on the point whether the deceased-Vijay Yadav was an income tax payer and further on Issue No. 6 whether the applicants are entitled for compensation, “the Tribunal” took the two issues together and taking into account the exhibits so produced, it decided both the issues in favour of the applicants-respondents.

12. “the Tribunal” accordingly took up the Issue No. 7 on the point whether the claimants are entitled for any relief or not and further held that the applicants are entitled for the compensation and after calculation, it came to the tune of Rs. 22,89,360/- with 9 per cent interest on the said amount from the date of the filing of the suit till the same is actually paid.

13. Aggrieved by the said order, the present appeal has been filed.

14. Heard Mr. Durgesh Kumar Singh, learned counsel for the New India Assurance Company Ltd. duly assisted by Mr. Rajesh Kumar and Mr. Gyanendra Kumar Singh,



learned counsel for the respondents.

15. Although Mr. Durgesh Kumar Singh, learned counsel for the Assurance Company tried to challenge the said findings of “the Tribunal as also the compensation awarded, the alternate submission put forward by him is/was that the interest amount should have been 6 per cent instead of 9 per cent and accordingly, he prayed that so far as interest amount is concerned, the same needs to be modified.

16. Mr. Gyanendra Kumar Singh, learned counsel for the Claimants-Respondents fairly submits that the appellants will be content if the amount is released along with 6 per cent interest. He further submitted that as the matter is of the year, 2016, it is high time that the appellants, the lady along with her children should be compensated for the loss of life of their bread earner.

17. In view of the aforesaid fair stand taken by the respective counsels, the order dated 31.03.2016 and the Award dated 18.06.2016 passed by the learned 1st Additional District Judge cum Motor Accident Claim Tribunal, Gaya is modified to the extent that the applicants shall be entitled to the compensation amount of Rs. 22,89,360/- along with 6 per cent interest from the date of the filing of the suit till the amount is



finally cleared. All the aforesaid exercise shall be completed within a period of two months.

18. Mr. Durgesh Kumar Singh, learned counsel for ‘the New Assurance’ submits that the company be returned the statutory amount deposited by it.

19. The same is accordingly, ordered. The Company is entitled to get back the statutory amount.

20. The M.A. No. 1209 of 2016 is accordingly stands disposed off.

(Rajiv Roy, J)

Neha/Jagdish/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	26/11/2022
Transmission Date	

