

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.610 of 2016

Branch Manager, The New India Assurance Co. Ltd. Begusarai through its
Chief Regional Manager, Regional Office, New India Assurance Co. Ltd., 6th
Floor, B.S.F.C. Building, Fraser Road, Patna-1.

... .. Appellant/s

Versus

1. Anjani Kumari Wife of Late Jawahar Kumar Resident of village and P.O. - Mahna, P.S. - Barauni, Dist. - Begusarai.
2. Shubham Kumar (Minor), Son of Late Jawahar Kumar under the guardianship of mother Anjani Kumari, resident of village and P.O. - Mahna, P.S. - Barauni, Dist. - Begusarai.
3. Fulkumari Devi, Wife of Sri Bhuneshwar Prasad Singh and mother of Late Jawahar Kumar Resident of village and P.O. - Mahna, P.S. - Barauni, Dist. - Begusarai.
4. Sri Dayanand Kumar, Son of late Baidnath Pd. Yadav Resident of village - Barimilki, Rajgir, Dist. - Nalanda (owner of the Vehicle BR 21A - 5459).
5. The Oriental Insurance Company Ltd., Branch Office, Kachhari Road, Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raj Kumar Singh Vikram, Advocate
For the Respondent/s	:	Mr. Dhanendra Choubey, Advocate Mr. Randhir Kumar No. 1, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

7 03-11-2023

Re:- I.A. No. 9243 of 2016

This interlocutory application has been filed under
Section 5 of the Limitation Act for condoning the delay of 32
days in filing the present appeal.

2. Earlier notices were issued upon which respondent
nos. 1, 2, 3 and 5 have appeared.

3. Having regard to the statements made in the
interlocutory application, the delay in filing the present appeal is



condoned.

Re:- Miscellaneous Appeal No.610 of 2016

4. This Miscellaneous Appeal has been filed against the judgment and award dated 13.01.2016 passed in MACT No. 41 of 2007 by learned Additional District and Sessions Judge-II cum Motor Vehicle Accident Claim Tribunal, Begusarai, by which the learned Tribunal has awarded compensation to the tune of Rs. 7,98,000/- in favour of the claimants.

5. Learned counsel for the appellant submitted that the learned tribunal has failed to consider that the pick-up van on which the deceased and others were travelling was not a passenger vehicle, rather, it was a gratuitous carrying vehicle and as such the deceased was gratuitous passenger. Hence, the Insurance Company is not liable to pay any sum of compensation to the claimants.

6. Learned counsel for the appellant further submits that the appellant has right to recover the award amount from the owner of the vehicle.

7. On the other hand, learned counsel for the claimant opposed the submission made by learned counsel for the appellant.

8. Having heard the learned counsel for the parties as



well as on going through the materials available on record and keeping in view the decision in the case of **Royal Sundaram Alliance Insurance Co. Ltd. Vs. A. Meenakshi and Others** reported in **2009 SCC OnLine Mad 589**, wherein the Hon'ble Madras High Court has held that "*A comprehensive policy covers the risk of gratuitous passenger to the liability incurred.*", I am not inclined to interfere in award passed by the learned Tribunal.

9. The insurance company is at liberty to take recourse to recover the amount from the owner of the vehicle after payment of award amount to the claimants.

10. The appeal is, accordingly, dismissed with the aforesaid observation.

11. Office is directed to return the statutory amount, if any, to the appellant- Insurance Company.

(Khatim Reza, J)

Sankalp/-

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