

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.860 of 2016

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Ninja Group Security, Main Road Adityapur, Near Sai Mandir, Post+P.S.
Adityapur, District Sarai Kela, Kharsawan, Jharkhand-831013
Proprietor- Awadesh Kumar S/o Gorakh Prasad, Resident of Q.N.17/1266,
Cross Road N.19, Ashram Coloney Adityapur, P.S. Adityapur, District Sarai
Kela, Kharsawan, Jharkhand.

... .. Appellant/s

Versus

Nira Kuwar W/o Late Surendra Kumar Singh, Resident of Village- Chapra,
Post Office- Amba, P.S.- Kutumba, Distt- Aurangabad, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Din Bandhu Mishra, Advocate.

For the Respondent/s : Mr. Santosh Kumar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 03-09-2024

I.A. No.01 of 2023 (Limitation Petition)

This Interlocutory Application No.01 of 2023 has
been filed under Section 5 of the Limitation Act for condonation
of delay of 142 days in filing the present Misc. Appeal.

2. Learned counsel for the appellant submits that the
impugned order/ award dated 06.01.2016 has been passed ex-
parte and the appellant had no knowledge about the same and he
came to know about the said judgment/award only in the month
of May, 2016 and after taking the certified copy of same, he has
filed the present Misc. Appeal. The delay on the part of
appellant is not intentional and there is no deliberate laches on
the part of appellant.



3. There is no objection to this application.

4. In view of the submission of learned counsel for the parties and considering the averments made in the application, the I.A. No.01 of 2023 is allowed.

5. The delay in filing the present Misc. Appeal is condoned.

Re :- Miscellaneous Appeal No.860 of 2016

6. Heard learned counsel for the parties and perused the Lower Court Records (LCR).

7. This Misc. Appeal is directed against the order/ award dated 06.01.2016 passed in C.W.C. Case No.37 of 2014 (Nira Kunwar vs. Ninja Group Security) by the Deputy Labour Commissioner-cum-Commissioner Employee's Compensation, Magadh Commissioner, Gaya (hereinafter referred to as "The Commissioner") with prayer to set-aside the aforesaid ex-parte order/ award dated 06.01.2016.

8. The case of the claimant is that Surendra Kumar Singh, the husband of the claimant, was employed and was working as permanent Security Guard with appellant on salary of Rs.8,000/- per month in the office of appellant situated at Gamhariya (Jharkhand). On 13.04.2013 when the husband of claimant was on duty, some antisocial element entered into



Ninja Group Security Campus for the purpose of theft and when the same was opposed by the husband of claimant, he was murdered, for which Gamhariya P.S. Case No.44 of 2013 under Sections 302 & 201 of the Indian Penal Code was lodged and the post-mortem was done. The claimant being dependent and legal heir of deceased has filed the claim petition before the Commissioner under Section 22 of the Employees Compensation Act, 1923 on 10.12.2014 against the appellant on the ground that the deceased was the employee of appellant who was murdered during the employment with appellant and is entitled for compensation.

9. From perusal of the LCR, it appears that the said case was registered on 07.02.2015 and notice was issued to the appellant and the case was fixed on 25.03.2015 and thereafter the case was fixed on 11.06.2015 & 05.08.2015 for appearance on behalf of the appellant. Thereafter on 10.09.2015 on the application of claimant, the Court observed that the appellant is not appearing in the case despite receiving the notice and accordingly ex-parte hearing was fixed on the next date i.e. 20.11.2015. Two witnesses have been examined and after hearing the argument on behalf of the claimant, the impugned judgment/award has been passed on 06.01.2016 wherein the



appellant was directed to make the payment of Rs.6,88,000/- alongwith 12 % interest on it from the date of accident i.e. 13.04.2013 till the deposit of said amount.

10. Aggrieved by the said order/award dated 06.01.2016, the appellant has filed the present Misc. Appeal under Section 30 of the Employees' Compensation Act, 1923.

11. Learned counsel for the appellant submits that the appellant had no knowledge about the case so he neither appeared before the Commissioner nor guided the claimant to make the party to the National Insurance Co. Ltd. and also to make the Employees' State Insurance Corporation (ESIC) as necessary party as the deceased was covered by EPF, ESIC and Insurance. He further submits that Late Surendra Kumar Singh was the employee of the appellant at the relevant time and he was insured by the National Insurance Co. Ltd. vide Policy No.170100/41/13/8600000001 and the Insurance Company is duty bound to give the compensation to the family of Late Surendra Kumar Singh, the then employee of the appellant. He further submits that Section 53 of the Employees State Insurance Act, 1948 bar against receiving or recovery of compensation or damages under any other law including under the Employees' Compensation Act, 1923 and the employee i.e.



Surendra Kumar Singh was also insured with ESIC under the Employees' State Insurance Act, 1948, accordingly, the appellant is not liable to make payment of the compensation amount to the family of the deceased employee. He also submits that sub-section 3 of Section 10A of Employees' Compensation Act, 1923 states that "if the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability. In the present case, since the appellant had no knowledge about the filing of CWC No.37 of 2014, he had no opportunity to indicate the grounds on which the appellant disclaims liability. It is submitted that the finding of the fact with respect to service of notice is based on no evidence which is perverse, which give rise to a substantial question of law. He further submits that this case is fit for remand after setting aside the judgment/award dated 06.01.2016 and he is ready to cooperate in the proceeding before the Commissioner.

12. Learned counsel for the respondent/claimant submits that claimant is widow of deceased who was the employee of the appellant and she is entitled to get the compensation amount. The claimant had filed the case before the Commissioner. in the year 2014, however, till date she has



not got any amount from the appellant or the Insurance Company. He has further submitted that the appellant has not appeared before the Court below. The learned counsel fairly conceded that from the LCR it appears that proper service of notice was not duly served upon the appellant. He has submitted that learned Commissioner may be directed to conclude the proceeding within four months in the facts and circumstances that the present case is very old case and the appellant is ready to assist the Court concerned in the proceeding. He also submits that he will make National Insurance Co. Ltd. as well as ESIC as party-respondent before the Court below.

13. The substantial question of law to be decided in this appeal is whether the Commissioner has misdirected himself where he awarded the compensation without having a notice of proceedings served on the employer/appellant and accordingly the orders of Commissioner are perverse.

14. Having heard the learned counsel for the parties and considering the submissions made by the learned counsel for the parties and on perusal of the LCR, it appears that there is no material/ acknowledgment on record to show that how the notice on appellant was served and with what mode. Learned counsel for respondent fairly conceded that there is no material



to show that notice was duly served upon the appellant. In opinion of this Court the appellant was not duly served with the notice and the ex-parte hearing was done by the Court below which is against the well settled principle of law and against the principles of natural justice. There is a perversity in the order of learned Commissioner as there is nothing on the record to show that appellant was duly served a notice of proceeding and the finding on service of notice is based on no material. The question of law is decided in favour of appellant and against the respondent. The appeal will have to be allowed. The order/award dated 06.01.2016 and order dated 10.09.2015 with respect to ex-parte hearing passed in C.W.C. Case No.37 of 2014 by the Commissioner is accordingly set-aside and the case is remanded back to the concerned Commissioner for determination/order afresh, after hearing the parties, expeditiously preferably before six months from today in accordance with law without granting unnecessary adjournment. Accordingly, the present Misc. Appeal stands **allowed**.

15. The claimant is directed to make the National Insurance Co. Ltd. and Employees' State Insurance Corporation as party-respondent and the appellant is also directed to appear before the Court below and cooperate in early disposal of the



said C.W.C. No.37 of 2014.

16. Statutory amount, if any, deposited by the appellant be released to him.

17. Pending application(s), if any, shall stand disposed of.

18. Let the Trial Court Record of this case be returned back forthwith to the concerned Commissioner.

19. Both the parties are directed to appear before the learned Commissioner on 24.09.2024 in this case for further proceeding.

20. Learned Commissioner is directed to send the compliance report after disposal of C.W.C. No.37 of 2014.

(Sunil Dutta Mishra, J)

Ritik/-

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

