
(2019) 07 JH CK 0124

In the Jharkhand High Court

Case No : Miscellaneous Application No. 190 Of 2018

Branch Manager, Oriental Insurance Co. Ltd

APPELLANT

Vs

Sangita Devi And Ors

RESPONDENT

Date of Decision : 06-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Code Of Civil Procedure, 1908 — Order 9 Rule 13

Citation : (2019) 07 JH CK 0124

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Alok Lal, Anil Kr. Sinha, Amit Kr. Sinha

Final Decision : Disposed Of

Judgement

I.A. No. 2945 of 2018

1. I.A. No. 2945 of 2018 has been filed for condonation of delay of 272 days in filing the appeal.

2. Perused the I.A. Reasons mentioned in the I.A. are accepted.

3. Accordingly, I.A. No. 2945 of 2018 is allowed.

M.A. No. 190 of 2018

4. This appeal has been listed on mentioning by the claimant who has filed I.A. No. 5883/2019 for vacating the stay order passed by this Court vide order dated 11.04.2019 in I.A. No. 2946/2018.

5. Learned counsel for the claimants has filed I.A. No. 5883/2019 in view of the liberty granted by co-ordinate Bench of this Court to move before this Court for vacating the order of stay dated 11.04.2019. Learned counsel for the claimants has submitted that occurrence is of 08.03.2010. The claimants are the wife, son and daughter of the deceased. Though the claim case was filed in the year, 2010

itself but the same has been disposed of vide award dated 27.03.2017. Learned counsel for the claimants has further submitted that though the amount of compensation has been deposited to the tune of Rs. 33,59,032/- by the appellant vide cheque No. 602898 dated 09.05.2019 of "YES BANK" without calculating and adding the interest @9% per annum from the date of admission of claim application under section 166 of the M.V. Act i.e. 23.06.2012 till realization of amount, as such, the claimants who are poor sufferer and victim may be allowed to withdraw the same. The cheque deposited has lost its validity, the same may be re-validated/re-issued by the appellant along with interest till the date of actual payment.

6. Learned counsel for the appellant has submitted that it is a case where the owner of the vehicle is a public sector undertaking known as Central Coalfields Limited represented through Material Manager (S) C.C.L. Dakra, Ranchi. Owner of the vehicle ambulance bearing registration no. BR-14P-1435 is C.C.L. but the claim case has been decided in absence of C.C.L. as the proceeding was an ex parte. Even after service of notice upon the C.C.L., the learned Tribunal has held which is quoted herein under:

"Since, insured/owner of the offending vehicle violated terms and conditions of the insurance policy by plying the offending vehicle without holding driving license for the charge sheeted driver therefore, O.P. No. 2, insurer of the vehicle has right to recovery for the amount paid to the applicants in satisfaction of the award against owner of the offending vehicle."

Learned counsel for the appellant has further submitted that under the aforementioned background, now the C.C.L. has put appearance in the present appeal, as such, by keeping this case pending, this Court may release the amount in favour of the claimants allowing the insurer/appellant to file application before executing court to recover the amount paid to the claimants in satisfaction of the award from owner of offending vehicle in view of the direction of the Tribunal.

7. Learned counsel for the C.C.L. has submitted that award has been passed ex parte against O.P. No. 1 and the Tribunal has recorded right to recover the amount paid to the claimants in satisfaction of award against the owner of the offending vehicle, as such, he has also no objection if the amount is withdrawn by the claimants. Learned counsel for C.C.L. has submitted that till date they have not filed any application under order 9 rule 13 of the CPC even after having knowledge of the ex parte order against them but they may be given right to contest the case against the Insurance Company before the Tribunal.

8. After hearing the parties and on the basis of materials available on record, it is admitted position that the claimants are entitled to get compensation amount along with interest in view of the award passed by the Tribunal. The principal amount has already been deposited by the Tribunal in compliance of the order dated 11.04.2019 passed by this Court but without calculating the interest, as

such, the Insurance Company/appellant is directed to pay the entire amount along with interest from the date of admission of claim application at the rate of 9% per annum till the realization of amount as directed by the Tribunal.

However, the appellant/Oriental Insurance Company Limited and the respondent No. 4 Material Manager (S) C.C.L. Dakra, Ranchi are at liberty to proceed in accordance with law, so far their cases are concerned before the Tribunal.

9. The statutory amount already deposited by the appellant to the tune of Rs. 25,000/- for preferring the miscellaneous appeal before the Registrar General of Jharkhand High Court be remitted to the Tribunal in the name of the claimants.

The Insurance Company is directed to calculate the interest and after deducting Rs. 25,000/- pay the same in accordance with law.

10. Learned counsel for the appellant has submitted that while passing the impugned award, the Tribunal has given a rider clause of recovery of the compensation amount from the C.C.L. considering that C.C.L. is a solvent public sector unit and as such, such order should not be passed by the Tribunal without assigning appropriate reason.

11. From perusal of the record, it appears that the award has been passed ex parte against the C.C.L. The Tribunal has rightly recorded the right to recovery while granting the impugned award in favour of the appellant as C.C.L. has not appeared in the proceeding in spite of notice issued by the Court. Since the award was passed by the Tribunal ex parte, as such, the Tribunal was justified in granting such right to recovery to the Insurance Company from the owner of the offending vehicle.

12. The appeal is accordingly disposed of with aforesaid observations.

13. As a result of disposal of the appeal, I.A. No. 5883/2019 has become infructuous. As such, I.A. No. 5883/2019 is hereby disposed of.