
(2007) 04 JH CK 0058
In the Jharkhand High Court

Neelawati Transport

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : (2007) 4 JCR 40

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This cross-objection purported to be under Order XLI, Rule 22 of the Code of Civil Procedure, has been filed by the respondent-owner in the instant M.A. No. 224 of 2002.

2. Miscellaneous Appeal No. 224 of 2002 has been filed by the claimant for enhancement of compensation.

3. It appears from the judgment passed by the Tribunal that the deceased was a "khalasi" in a Trecker. While the Trecker was going from one place to another place, it was dashed by a truck. The claim case was filed against the owner and insurer of the truck, who are respondents. The Tribunal held that it was because of the gross negligence of the driver of the truck accident took place. The Tribunal further held that at the relevant time when the accident took place the driver of the truck was holding a licence to drive light motor vehicles. On these findings the Tribunal awarded compensation and fixed responsibility upon the owner of the truck, due to the reason that it was violation of the provisions of the Motor Vehicles Act as also the Insurance Policy and therefore the Insurance Company has no liability.

4. Though the judgment and award was passed on 16.8.2002, the respondent-owner did not prefer any appeal. Against the impugned award the liability was fixed upon him, the claimants only preferred the Miscellaneous Appeal No. 224 of

2002 on 4.10.2002. Notice of this appeal was issued and it was served upon the respondent-owner on 13.7.2004, but no cross-objection, was filed within 30 days as provided under Order XLI, Rule 22 of the Code of Civil Procedure. This cross-objection was filed only on 22.3.2007, i.e. about three years from the date of service of notice of appeal upon him. An application u/s 14 of the Limitation Act has been filed for condonation of delay in filing the cross-objection.

5. We have perused the limitation petition. In para 3 of the cross-objection this appellant/respondent admitted that he came to know about the award on 13.7.2004 on the receipt of the notice sent in M.A. No. 224 of 2002. Therefore, admittedly notice of appeal was served on him and he came to know about the pendency of appeal on 13.7.2004. However, it is stated in the condonation application that when the case was listed for, hearing and was likely to be taken up the counsel contacted the cross-objector/owner to file affidavit in the Miscellaneous Appeal filed by the claimant and after filing affidavit it was found necessary to file the present cross-objection.

6. From the impugned order, it appears that the respondent owner of the vehicle appeared before the Tribunal and file written statement and contested the case. In spite of the fact that the judgment and award was passed against him, he did not choose to prefer any appeal. Not only that, after receipt of the appeal notice he did not file any cross-objection for about three years. It was only when the appeal was listed for hearing, this cross-objection has been filed.

7. In the aforesaid facts and circumstances of the case, we do not find any reason whatsoever to condone the delay in filing the cross-objection. The cross-objection is obviously barred by limitation. Hence the limitation petition (I.A. 871 of 2007) is rejected. Consequently cross-objection being C.O. No. 4 of 2007 is dismissed as barred by limitation.