

(2019) 07 JH CK 0120

In the Jharkhand High Court

Case No : Miscellaneous Application No. 333 Of 2017

New India Assurance Co. Ltd

APPELLANT

Vs

Meena Devi And Ors

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Citation : (2019) 07 JH CK 0120

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Alok Lal, A. K. Das

Final Decision : Disposed Of

Judgement

I. A. No. 4931 of 2017

The present Interlocutory Application has been filed for condonation of delay of 27 days in preferring the appeal.

Perused the I. A. reasons explained in the Interlocutory Application is accepted. In view of the reason discussed in the I. A. the delay in filing the present appeal is hereby condoned.

I. A. No. 4931 of 2017 stands allowed.

M. A. No. 333 of 2017

Heard, learned counsel for the appellant, Mr. Alok Lal, Advocate.

The appeal has been preferred against the award dated 30.01.2017 in Title (M.V.) Case No. 18 of 2014 whereby the claimant, who are wife, three sons and parents (father and mother) of the deceased have been awarded compensation to the tune of Rs.21,75,000/-along with interest @ 6% per annum against M/S New India Assurance Co. Ltd. from the date of filing of this suit till its payment through an account payee cheque of the said amount within sixty days, failing which the plaintiffs shall have an option to take legal recourse for the same.

Learned counsel for the appellant has submitted that against the award dated 30.01.2017 appellant has preferred the Miscellaneous Appeal on 19.06.2017 with delay of twelve days in preferring the appeal and as such, the appeal may be heard on point of limitation as well as on the merit. Learned counsel for the appellant has submitted that the learned tribunal though framed issue no. V:- whether the Truck bearing registration no. WB-37A-0318 had valid permit at the date and time of the accident, but actually the offending vehicle was a bus bearing registration no. WB-37A-0318 and for the same occurrence police has also registered Jharia P.S. Case No.506 of 2013. Learned counsel for the appellant has submitted that while passing the award the learned tribunal has considered issue no. V with issue no. IV jointly, which is quoted herein:-

Issue no. IV & V: "In this context the plaintiffs have furnished the driving licence of the driver of the offending bus, Exhibit 7 which is in the name of Ramesh Prasad having validity till 20.07.2014 thereby covered the date of accident i.e. 27.11.2013. Further they have furnished the certificate of the fitness Exhibit 5, Tax token Exhibit 6 all of which were found to be valid and effective on the date of the said accident. Thus, these issues are decided accordingly."

Learned counsel for the appellant has submitted that from perusal of the exhibits, which have been mentioned from 1 to 8, nowhere the tribunal has mentioned about the filing of the permit and as such, in absence of any finding with regard to issue no. V the impugned award is fit to be set aside.

In this regard learned counsel for the appellant has relied upon judgment rendered by Hon'ble Apex Court in the case of (1) Pappu and Ors. Vs. Vinod Kumar Lamba and Ors. (2018) 3 SCC 208, (2) Amrit Paul Singh and Ors. Vs. TATA AIG General Insurance Co. Ltd. and Ors. (2018) 7 SCC 558 and in view of 158 (6) of the Motor Vehicle Act where Hon'ble Apex Court has considered the same and allowed the appeal preferred by the insurer with condition of recovery of said amount of compensation paid to the claimant with interest with stipulation that insurer shall be entitled to recover the same from the owner and the driver.

Heard, learned counsel for the appellant and learned counsel for the respondents perused the impugned award, it appears that issue no. IV and V have been dealt jointly in paragraph-10 by the learned tribunal but with regard to the finding of issue no. V, the tribunal has not given any finding.

After hearing learned counsel for the appellant and on the basis of materials brought on record, it appears that the unfortunate accident took place on 27.11.2013 and the vehicle was insured before the New India Assurance Co. Ltd. vide Policy No.54060431130100001109 effective from 18.07.2013 to 17.7.2014 and as such, the date of unfortunate accident dated 27.11.2013 is within the insured period. The learned tribunal Court has framed issue No. V with regard to valid permit at the date and time of the accident but from the finding mentioned in paragraph-10, the tribunal has not given any finding with regard to the same

as such, the insurer i.e. M/S New India Assurance Co. Ltd. through Divisional Manager, Bank More, Dhanbad is directed to indemnify the insured and pay the compensation as awarded by the learned tribunal Court within a period of 30 days from today with up to date interest as awarded by learned Tribunal after deducting the statutory amount of Rs.25,000/-, which has been deposited for preferring this appeal by the appellant, New India Assurance company with right to recovery from owner/driver of the offending vehicle after affording an opportunity to rebut the same before the Tribunal.

Office is directed to remit the aforesaid statutory amount forthwith to the tribunal so as to disburse the same to the plaintiff / applicant no.1, Meena Devi on proof.

The Secretary District Legal Service Authority, Dhanbad is directed to look into the matter and disbursed the amount as awarded by the learned tribunal on proper verification, as the appellant has a right to recover the same in accordance with law by giving an opportunity to the owner and the driver to produce the permit of the vehicle covering the alleged date of occurrence, if there is no such document already on record.

Accordingly, the instant Miscellaneous Appeal is hereby disposed of in the aforesaid mentioned terms.