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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 278/2018 & 23273/2018**

NATIONAL INSURANCE CO LTD. Appellant

Through: Mr.Pradeep Gaur, Advocate.

Versus

ROOBI DEVI & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **29.05.2018**

C.M.No.23275/2018 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

FAO 278/2018, C.M.No.23274/2018 (delay) & C.M.No.23273/2018 (stay)

There is a delay of 474 days in filing of the appeal and further delay of 35 days in re-filing the same. The delay is sought to be explained on the ground that a review petition of the impugned order has been filed within time and the appellant/applicant believed that review was maintainable. However, it was dismissed on 12.02.2018 because the appellant/applicant was unable to show the provision of law under which such review petition was maintainable. The appellant/applicant is a large corporate body and has the assistance of a battery of lawyers. It is expected to be better informed about the legal procedure than a lesser blessed and unlettered litigant like the claimant in this case. Pursuing a frivolous application for over one and half year is not a justified reason for condoning the delay. The application should be dismissed. However, the appellant submits that it is a good case on



merits and grave injustice would be done to it if the impugned order is allowed to be executed.

The compensation order dated 30.11.2016 has been impugned on the ground that the findings on the employee - employer relationship is not based on any evidence and there is no discussion for reaching the said conclusion. It is argued that in the absence of such important link of this employment with the insurer, the insurance company has no liability to indemnify the insured and/or pay compensation amount. It is stated that there is no findings on employee - employer relationship between the deceased and M/s Prime Aluminum, a proprietorship firm through its Proprietor/Director, respondent no.3. The insured vehicle was in the name of M/s Prime Aluminum.

The learned counsel for the appellant relies upon the reply filed by M/s Prime Aluminum which has denied the employment of deceased Rajpati Singh and of Ram Uday since 31.12.2009. It was their case that they had employed Mr.Vinay Kumar Jha who is a relative and borrowed the insured motorcycle and the said borrower had met with an accident receiving fatal injuries. A police report and FIR No.223/2012 was registered. The complainant's witness No.2 Mr. Ram Uday had himself deposed that the deceased had consumed alcohol and collided with a road divider, which led to his death. Mr. Ram Uday in his cross-examination stated that he had no document to show his employment with M/s Prime Aluminum. Similarly, no document has been presented on behalf of Rajpati Singh, the deceased, to show his employment with the appellant.

The learned counsel for the appellant submits that in the absence of any such evidence, the impugned order could not conclude that the deceased



was employed by the assured/insured i.e. M/s Prime Aluminum.

Issue notice through ordinary process, Speed Post, approved courier, *dasti*, through counsel as well, returnable on 28.09.2018.

The impugned order is stated till the next date of hearing.

NAJMI WAZIRI, J.

MAY 29, 2018

SSC