

IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Civil Miscellaneous Appellate Jurisdiction]

M.A. No. 55 of 2020

National Insurance Company Ltd. Appellant
Versus

1.Sukur Muni Tudu
2. Anita Marandi
3. Sangeeta Marandi
4. Sunita Marandi
5. Talamoy Soren
6. Ashok Choudhary
7. Ganga Prasad Raut

.. ... Respondents

CORAM :HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through :-Video Conferencing)

For the Appellant : Ms. Amrita Banerjee, Advocate.
For the Resp. :

03/02.02.2021.

Heard, learned counsel for the appellant, Ms. Amrita Banerjee.

The instant Miscellaneous Appeal has been preferred by the National Insurance Company Limited against the judgment/award dated 30.07.2019 passed by learned M.A.C.T.-cum-District Judge-I, Dumka in Motor Accident Claim Case No.46 of 2018 whereby the claimants namely, 1.Sukur Muni Tudu, W/o Late Babu Ram Marandi, 2.Anita Marandi, D/o Late Babu Ram Marandi, 3.Sangeeta Marandi, D/o Late Babu Ram Marandi, 4. Sunita Marandi, D/o Late Babu Ram Marandi and 5. Talamoy Soren, W/o Late Partaa Marandi all resident of Village- Kaikhapra, P.O. & P.S.- Ramgarh, District- Dumka, Jharkhand have been awarded compensation to the tune of Rs.18,70,000/- along with interest @ 6% per annum from the date of filing of the claim petition up to the date of payment. Further it is ordered that the amount if any awarded to the claimants under Section 140 MV Act shall be deducted from the above amount. The claimant no.2 being minor is represented through her natural guardian mother i.e. claimant no.1.

Learned counsel for the appellant has submitted that admittedly the deceased (Baburam Marandi) was a home guard, aged about 45 years, but the learned Tribunal while computing the compensation has wrongly applied the multiplier of 15 instead of 14 contrary to the judgment passed by the Hon'ble Apex Court in the case of *Sarla Verma (Smt) & others vs. Delhi Transport Corporation & another*, reported in (2009) 6 SCC 121.

Learned counsel for the appellant has further submitted that it is a case of misuse of permit by the owner of the vehicle, as such, right of recovery may be given in favour of the Insurance Company from the owner of the offending vehicle

in view of the judgment passed by the Hon'ble Apex Court in the case of ***Oriental Insurance Co. Ltd. Vs. Nanjappan & Ors.***, reported in ***(2004) 13 SCC 224***, as Exhibit-A that is verification of permit memo no.430 dated 07.06.2019 shows that vehicle was not permitted to ply on the route where the accident took place, as such, notice may be issued to the respondents.

Learned counsel for the appellant has further submitted that there is delay of 58 days in preferring the appeal and for condonation of the same, I.A. No. 1274 of 2020 has been preferred.

Learned counsel for the appellant has further submitted that for stay of proceeding, I.A. No. 1703 of 2020 has been filed.

Considering such submissions, let notice be issued to **respondent no.6-** Ashok Choudhary, S/o Adhik Lal Choudhary (Owner of the offending Bus bearing registration No.JH04C-6104) R/o Village Hansdiha, P.O. & P.S. Hansadiha, District-Dumka and **respondent no.7-** Ganga Prasad Raut, S/o Sukdeo Raut (Driver) R/o Village- Dhanbay, P.S. Hansdiha, District Dumka in I.A. No. 1274 of 2020 as well as in memo of appeal under both process i.e. under registered cover with A/D as well as under ordinary process for which requisites etc. must be filed within a period of four weeks.

Let the appeal be listed after the service of notice.

So far I.A. No.1703 of 2020 is concerned, appellant is directed to deposit the entire awarded amount along with interest as awarded by the learned Tribunal in two bank drafts, one of the Rs.10 lacs and another is of balance amount inclusive of up to date interest as awarded by the learned Tribunal. Rs.10 lacs shall be indemnified to the claimants after proper verification.

So far the another cheque of balance amount inclusive of up to date interest as awarded by the learned Tribunal is concerned, the same shall be deposited in the nationalized bank during the pendency of the appeal so as not to cause any loss either to the claimants or to the Insurance Company at the time of final adjudication of the appeal.

The compensation amount shall be deposited within a period of 90 days and to that effect affidavit must be filed by the appellant.

If such amount is deposited, the executing court shall not proceed in Execution Case No.27 of 2019 pending in the court of Learned District Judge-I-cum- Motor Accident Claim Tribunal, Dumka.

Accordingly, I.A. No.1703 of 2020 is disposed of.

(Kailash Prasad Deo, J.)