

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.57 of 2014

=====

Jham Chaudhary S/O Late Meharchand Chaudhary R/O Village Dubhal, P.O.
And P.S. Chand Chaura, District Gaya.

... .. Appellant/s

Versus

1. The New India Assurance Company Ltd. through its Divisional Manager,
Division Office, near Civil Lines, District, Gaya
2. Sajid Ali Hassan S/O Aley Hassan Resident Of Village And P.O. Rasalpur,
G.T. Road Barmauli, District Allahabad, Uttar Pradesh.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Nand Kishore Prasad Sinha
For the Respondent/s : Mr.Mukteshwar Pd. Singh

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 02-05-2019

I.A. No.5241 of 2015:

Heard.

This application has been filed for condoning the
delay of 23 days in filing miscellaneous appeal.

For the reasons stated in the petition, this Court is
satisfied that appellant was prevented for sufficient cause in
filing the appeal within time, as such, the delay in filing the
present appeal is condoned.

I.A. No.5241 of 2015 stands allowed.

Heard.

This appeal has been filed for setting aside the
judgment dated 27.7.2013 and Award dated 7.9.2013 passed by
3rd Additional District Judge -cum -Motor Vehicles Accident



Tribunal, Gaya in claim case no.2 of 2013 / 26 of 2007 by which compensation of Rs.52,868/- has been granted to the claimant-appellant.

Appellant had filed claim case under Section 166 of M.V. Act claiming compensation of rupees one lakh on account of permanent disability suffered by him in accident which took place on 4.2.2003 at 7.30 p.m. on G.T. Road, Barachatti, Gaya. Appellant along with others were standing by the side of road when the offending truck being driven rashly and negligently dashed causing serious injury. F.I.R. was instituted against the driver of the offending truck under Sections 279, 337, 333, 304A of IPC giving rise to Barachati P.S. Case No.14 of 2003. In said accident, two persons died and 10 to 15 persons including appellant got injured and were treated in M.M.C.H. Hospital, Gaya. The offending vehicle was insured with opposite party no.1, the New India Insurance Company Ltd. Appellant was aged about 50 years and claimed to be toddy seller and his monthly income was Rs.3,000/- per month and due to said accident resulting in permanent disability there was loss of earning for which compensation was claimed. Opposite party no.1, the Insurance Company appeared and filed written statement and contested the claim of appellant, however, in spite



of valid service of notice, opposite party no.2, the owner of the vehicle did not appear. The Tribunal framed five issues and three witnesses were examined on behalf of appellant and certified copy of F.I.R., permanent disability certificate, photocopy of charge-sheet, insurance policy and owner book were exhibited as documentary evidence, however, no evidence was adduced on behalf of opposite party.

Tribunal has held that due to rash and negligent driving by the driver of the offending truck, claimant suffered permanent disability and is entitled for compensation. The Tribunal also found that the offending truck was insured on the date of accident with opposite party no.1, Insurance Company. Appellant suffered permanent disability to the extent of 25% and he was aged about 50 years. Tribunal has held that there was no oral and documentary prove in respect of earning of claimant as such on the basis of notification no.1235 dated 5.5.2003 issued by Labour Resources Department, Government of Bihar under the Minimum Wages Act, the wages of unskilled person was Rs.62/- and calculated the monthly income as Rs.62 x 26 =Rs.1612 and annual income as Rs.1612 x12=Rs.19,344/- and applied multiplier of 13, and assessed compensation to be Rs.19344 x 13= Rs.2,51,472/- and permanent disability being



25%, as such just compensation would be Rs.62,868/- and adding Rs.15,000/- for pain and suffering, medical expenses, the amount of compensation comes to Rs.77,868/-. The claimant has already received Rs.25,000/- as interim compensation. Accordingly, the remaining compensation amount would be Rs.52,868/-, however, the Tribunal has granted 6% interest from the date of order and not from the date of claim application filed in the Tribunal.

This Court in a compensation arising out of same accident, in M.A. No.56 of 2014 by order dated 13.7.2017 has granted 6% interest from the date of application and appellant is also entitled for the same benefit.

Accordingly, the Award is modified to the extent that appellant is entitled for interest @ 6% from the date of filing of claim application in the Tribunal till the date of payment.

The appeal is partly allowed.

Interest be granted to the claimant-appellant @ 6% per annum from the date of presentation of application till its payment and differential amount be deposited by the Insurance Company within 60 days from the date of receipt/production of order passed by this Court.

Let the L.C.R. be immediately sent to the court



concerned.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2019
Transmission Date	04.05.2019

