

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)

M.A. No. 135 of 2020

.....

Dilip Saw, S/o Late Surya Narayan Saw

..... Appellant

Versus

1. Ruma Singha, W/o Late Nitai Singh @ Nita Singh @ Nitai Chandra Singh, R/o Village Madhabpur, P.O. & P.S. Para, District Purulia (West Bengal), presently residing at Sanjay Road, Aam Bagan, P.O. & P.S. Sakchi, Town Jamshedpur, District East Singhbhum (Jharkhand)

2. Sasti Chandra Singh Munda, S/o Turu Singh Munda, R/o Village Janta, P.S. Chouka, District Saraikella- Kharsawan (Jharkhand)

3. Niranjana Kumar, S/o Late Jagivan Kumar, R/o Grin Park, Uliyan Basti, P.O. & P.S. Kadma, Town Jamshedpur, District East Singhbhum (Jharkhand)

4. Divisional Manager, The New India Assurance Company Limited, having its Divisional office at Kamani Center, Main Road, Bistpur, P.O. & P.S. Bistupur, Town Jamshedpur, District East Singhbhum (Jharkhand)

..... Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO

For the Appellant : Mr. Indrajit Sinha, Advocate

Mr. Vipul Poddar, Advocate

For the Insurance Company : Mr. Manish Kumar, Advocate

03/Dated: 08/07/2020.

Heard, learned counsel for the parties.

Owner of the offending vehicle (Dumper) bearing Registration No. JH-05AM-2996 is the appellant before this Court.

Appellant has preferred this appeal on the ground that in the Compensation Case No.190 of 2014, learned Tribunal has wrongly fixed the case ex-parte against present appellant, who was O.P. No.1 before the claim Tribunal. **O.P. No.1** [Dilip Saw, S/o Late Surya Narayan Saw, Resident at Post Khuti, P.S. Chouka, District Seraikela-Kharswan, Owner of offending vehicle No. JH-05A-2996 Dumper], **O.P. No.2** [Sasti Chandra Singh Munda, S/o Turu Singh Munda, R/o Village Janta, P.S. Chouka District Seraikella Kharaswan, Driver of the offending vehicle No. JH-05A-2996 Dumper] and **O.P. No.3** [Niranjana Kumar, S/o Late Jagivan Kumar, R/o Grin Park, Uliyan Basti, P.O. & P.S. Kadma, Dist. Singhbhum East, Town Jamshedpur, Owner of scooty No. JH-05-3806] without proper service of notice and in absence of service report, in terms of order dated 04.05.2017, which is at page 59 of the brief.

Learned counsel for the appellant has submitted that since the appellant has not been duly noticed by the learned Tribunal, as such, he could not place his case before the learned Tribunal and thus, the learned Tribunal has wrongly considered the appellant liable and awarded compensation to the tune of Rs.7,10,000/- to the applicant/claimant- Ruma Singha, W/o Late Nitai Singh

@ Nita Singh @ Nitai Chandra Singh along with interest @ 6% per annum from the date of filing of the claim application after deducting the amount of Rs.50,000/- if paid under Section 140 MV Act.

Learned counsel for the appellant has further submitted that bailable warrant has been issued on 14.01.2020. Thereafter the appellant got knowledge of the case and applied for the certified copy of the order on 27.02.2020, as such, the Execution of the impugned award vide Certificate Case No.05/MV/2019-20 pending before the court of sub-Divisional Officer-cum-certificate Officer, Dhalbhum, Jamshedpur may be stayed.

Learned counsel for the appellant has further submitted that since there was no knowledge to the appellant and only after issuance of bailable warrant of arrest issued on 14.01.2020, appellant got knowledge, as such, there is delay of 713 days in preferring the appeal and for condonation of the same, I.A. No.3036 of 2020 has been preferred.

Learned counsel for the appellant has further submitted that since the vehicle (Dumper) bearing Registration No.JH-05AM-2996 was insured before the Insurance Company- Royal Sundaram General Insurance Co. Ltd. but the insurer of the vehicle has not been impleaded as party in the claim application before the learned Tribunal, as such, Insurance Company-Royal Sundaram and the Branch Manager may be impleaded as party- respondent nos.5 & 6 in the present appeal and for impleading Royal Sundaram as party, I.A. No.3037 of 2020 has been preferred.

Learned counsel for the respondent no.4- The New India Assurance Company Ltd., Mr. Manish Kumar has submitted that though in the FIR name of the vehicle (Dumper) bearing Registration No.JH-05AM-2996 was not mentioned but during the investigation the name of the vehicle has transpired and on the basis of that the driver of the offending vehicle was arrested and he was granted bail on 18.05.2014 and vehicle was also released on the basis of the report submitted by Motor Vehicle Inspector, which has been mentioned in the case diary, as it appears from part of chargesheet appended at page no.48 of the brief.

Learned counsel for the respondent no.4- New India Assurance Company Ltd., Mr. Manish Kumar has fairly submitted that the deceased- Nitai Singh @ Nita Singh @ Nitai Chandra Singh was going to his relatives by Scooty bearing Registration No.JH-05AG-3806 which stands in the name of Niranjana Kumar (respondent no.3) and the said vehicle was even not found

insured before the New India Assurance Company Limited, as such, the New India Assurance Company Limited has no objection, if the notice is being issued to the other contesting respondents including the Royal Sundaram.

Considering the submission of learned counsel for the appellant and looking into the order dated 04.05.2017 passed by the learned Tribunal that in absence of service report, the learned Tribunal has wrongly fixed the case as ex-parte against the O.P. Nos.1 and 2, as such, this Court is inclined to consider the submission of learned counsel for the appellant.

So far the appellant could not appear because of the bona-fide reason as stated above and the Royal Sundaram has not been impleaded as the party, as such, this Court is inclined to allow I.A. 3037 of 2020 so as to implead Royal Sundaram General Insurance Co. Ltd. and Branch Manager as a party-respondent nos.5 & 6.

Accordingly, I.A. No.3037 of 2020 stands disposed of.

Let two copies of memo of appeal along with impugned judgment and other relevant documents be served upon learned counsel, Mr. Ashutosh Anand, who normally appears for Insurance Company- Royal Sundaram General Insurance Co. Ltd. within a period of two weeks and file receipt thereof for appearance of Insurance Company- Royal Sundaram General Insurance Co. Ltd. and implead the Royal Sundaram General Insurance Co. Ltd. as respondent no.5 and Branch Manager as respondent nos.6 within a period of two weeks after the lockdown period is over.

Let notice be issued to the claimants/**respondent no.1-** Ruma Singha, W/o Late Nitai Singh @ Nita Singh @ Nitai Chandra Singh, R/o Village Madhabpur, P.O. & P.S. Para, District Purulia (West Bengal), presently residing at Sanjay Road, Aam Bagan, P.O. & P.S. Sakchi, Town Jamshedpur, District East Singhbhum (Jharkhand), claimants/**respondent no.2-** Sasti Chandra Singh Munda, S/o Turu Singh Munda, R/o Village Janta, P.S. Chouka, District Saraikella- Kharsawan (Jharkhand) and claimants/**respondent no.3-** Niranjana Kumar, S/o Late Jagivan Kumar, R/o Grin Park, Uliyan Basti, P.O. & P.S. Kadma, Town Jamshedpur, District East Singhbhum (Jharkhand) in limitation as well as in main 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 four weeks.

Since no notice is required to issue upon respondent no.4 as learned counsel, Mr. Manish Kumar is appearing for respondent no.4.

In the meantime, the appellant shall deposit Rs.2,50,000/- before the Certificate Officer, Dhalbhum, Jamshedpur in Certificate Case No.05/MV/2019-20 within a period of 30 days from today. However, the said amount shall not be disbursed to the claimant during pendency of the appeal.

Put up this case after service of notice.

If said amount is deposited, the warrant of arrest against the appellant shall not be executed nor any coercive steps shall be taken against the appellant during pendency of the appeal.

Accordingly, I.A. No.3038 of 2020 also stands disposed of.

(Kailash Prasad Deo, J.)