

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 415 of 2019

.....
National Insurance Company Limited Appellant
Versus
Sombari Mardi & Others Respondents

WITH
C.O. No. 4 of 2021

.....
Sombari Mardi & Others Cross-Objectors
Versus
National Insurance Company Limited & Another
..... Respondents

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

.....
For the Appellant : Mr. Pratyush Kumar, Advocate.
For the Respondents :
[In M.A. No. 415/2019]
For the Cross-Objectors : Mr. Jitesh Kumar, Advocate.
For the Respondent No.1 : Mr. Pratyush Kumar, Advocate.
[In C.O. No. 4/2021]

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07/17.04.2021.

Heard, learned counsel for the appellant, Mr. Pratyush Kumar in M.A. No. 415/2019.

Learned counsel for the appellant has submitted that M.A. No. 415/2019 has been preferred by National Insurance Company Limited through its Assistant Manager against the award dated 20.02.2019 passed by learned District Judge-IX, Jamshedpur in Motor Accident Compensation Case No. 198/2017, whereby the claimants namely, (1) Sombari Mardi, wife of Late Budram Mardi, (2) Minor Santosh Mardi, son of Late Budram Mardi, (3) Minor Mangal Mardi, son of Late Budram Mardi and (4) Bati Devi, wife of Lakhan Manjhi (Minors are represented through their mother and natural guardian claimant no. 1, Sombari Mardi), have been awarded compensation to the tune of Rs. 7,45,000/- along with interest @ 6% per annum from the date of filing of the claim application i.e. 21.11.2017 till the date of actual payment and if the amount has been paid to the claimants under Section 140 of Motor Vehicles Act as ad-interim compensation, it shall be deducted from the awarded amount.

Learned counsel for the appellant has further submitted that the National Insurance Company Limited has preferred this appeal

with delay of 67 days and for condonation of same, I.A. No. 7829/2019 has been preferred and as such, delay may be condoned.

Learned counsel for the appellant has further submitted that claimants have *suo moto* filed Cross-objection i.e. C.O. No. 4/2021 under Order XLI Rule 22 C.P.C. without notice for enhancement of the award on the grounds that income of the deceased has been considered on the lower side contrary to the judgment passed by the Apex Court in the case of ***Chameli Devi & Others Vs. Jivrail Mian & Others*** reported in ***2019 (4) TAC 724 (SC)*** and the interest has been granted @ 6%, which ought to have been @ 7.5% in view of the judgment passed by the Apex Court in the case of ***Dharampal and Sons Vs. U.P. State Road Transport Corporation*** reported in ***2008 (4) JCR 79 (SC)***.

Learned counsel for the appellant has further submitted that the United Insurance Company Limited has preferred this appeal on two counts, first, that the deceased was himself sitting beside the driver and second, that vehicle has no permit for gratuitous passenger, as such, there is violation of terms and conditions of the policy. The same has been agitated before the learned Tribunal, but as the owner of the offending vehicle namely, Rajesh Kumar Singh, son of Ram Bilash Singh, residents of Raod No. 25, Q. No. 311/2/3, P.O. & P.S. - Adityapur, District – Seraikella-Kharsawan has not appeared before the learned Tribunal, even after notice and the case against the owner of the offending vehicle (opposite party no. 1) has been proceeded ex-parte vide order dated 29.01.2018, but since cross-objection has been filed by the claimants, as such, if this Court is inclined to enhance the compensation, then notice is required to be issued upon the owner of the offending vehicle.

Considering the same, let notice be issued in both the appeals to the owner of the offending vehicle namely, Rajesh Kumar Singh, son of Ram Bilash Singh, residents of Raod No. 25, Q. No. 311/2/3, P.O. & P.S. - Adityapur, District – Seraikella-Kharsawan, 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 from today.

The notice shall be served upon the owner of the offending vehicle through the Officer-in-Charge, Adityapur Police Station after verifying the address from the concerned District Transport Office, if so required.

Let both the appeals be listed after service of notice upon the owner of the offending vehicle.

In the meantime, parties shall exchange their pleadings.

(Kailash Prasad Deo, J.)

Sunil/-