

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M.A. No. 191 of 2018

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The New India Assurance Company Ltd. Appellant
Versus
Bhim Gope & Others Respondents

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

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For the Appellant : Mr. Debesh Ch. Ghosh, Advocate.
For the Respondents :

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05/05.04.2021.

Heard, learned counsel for the appellant, Mr. Debesh Ch. Ghosh.

Learned counsel for the appellant has submitted that the New India Assurance Company Limited has preferred this appeal against the award dated 06.01.2018 passed by learned District Judge-II-cum-M.A.C.T., Giridih in Title (M.V) Suit No. 12/2015, whereby claimants namely, (1) Bhim Gope (H/o deceased Hemiya Devi), S/o Late Hari Gope, (2) Arun Yadav (S/o deceased Hemiya Devi), S/o Bhim Gope and (3) Rajesh Yadav (S/o deceased Hemiya Devi), S/o Bhim Gope, have been awarded compensation to the tune of Rs. 6,58,934/- along with interest @ 6% per annum from the date of filing of the claim application i.e. from 06.04.2015 to be paid within 60 days from the date of award, failing which claimants will be entitled to get interest @ 9% per annum.

Learned counsel for the appellant has submitted that the appeal has been preferred in the year 2018 on various grounds, but after the judgment of the Apex Court passed in the case of *National Insurance Company Limited Vs. Pranay Sethi & Others* reported in (2017) 16 SCC 680, most of the grounds have been considered by the Apex Court, as such, the appeal may be heard and disposed of.

Learned counsel for the appellant has further submitted that though I.A. No. 5667/2019 has been preferred for condonation of delay, but the office has pointed out that the instant appeal has been preferred within time, as such, interlocutory application has become infructuous.

Under the aforesaid circumstances, I.A. No. 5667/2019 is disposed of.

After hearing learned counsel for the appellant as well as on perusal of the impugned award, it appears that on 05.03.2011, the deceased Hemiya Devi was coming from Isri Bazar with Raju Yadav on Hero Honda Motorcycle bearing registration No. JH-11G-0028 and as soon as they reached near Pratappur then all of a sudden, a driver of Ambassador car bearing registration No. JH-01J-3385 dashed the motorcycle due to which both Hemiya Devi and Raju Yadav sustained injuries, they were brought to Dumri Hospital from where they were referred to Zims Hospital, Seraidhela, Dhanbad, where in course of treatment, Hemiya Devi died on 07.03.2011. A case was instituted as Nimiaghat P.S. Case No. 19/2011 dated 05.03.2011 against the driver of the Ambassador Car bearing registration no. JH-01J-3385 under Sections 279, 337, 338, 427 and 304A of I.P.C. It appears that the vehicle was duly insured before the New India Assurance Company Limited, which has been brought on record and marked as X to X/6 for identification. The deceased died at the age of 45 years at the time of occurrence and she was vegetable seller, earning a sum of Rs. 6,000/- per month and Rs. 1,00,000/- was incurred in treatment of deceased under medical expenses.

However, the claimants have preferred M.A. No. 169/2018 for enhancement of the award, but the same has been dismissed for default for non-compliance of order dated 24.01.2020, and the same has not been restored till date, as such, keeping the instant appeal pending will not make much difference.

Considering the same, as there is no merit in appeal, this Court is not inclined to interfere with the impugned award.

Accordingly, the instant miscellaneous appeal is dismissed.

The statutory amount deposited by the appellant shall be remitted to the learned Tribunal within four weeks from today by the learned Registrar General of this Court for indemnifying part of the award. The balance amount shall be indemnified by the Insurance Company in terms of the award passed by the learned Tribunal without being prejudiced to the claimants' appeal i.e. M.A. No. 169/2018, which shall be considered on its own merit after restoration.

(Kailash Prasad Deo, J.)