bought and consumed by the persons other than the Company. In view of the finding that the sale of petroleum products in these cases had taken place within the territorial limits of responsent No. 1, the ratio of the aforementioned two Supreme Court decisions is not attracted. The petitioner thus cannot seek any assistance therefrom.

In the result, we find no merit in this writ petition and dismiss the same with costs.

S. C. K.

Before : G. R. Majithia, J.

NEW INDIA INSURANCE CO. LTD.,—*Appellant.*

versus

CHARANJIT KAUR AND OTHERS,—*Respondents.*

First Appeal from Order No. 48 of 1984

November 18, 1988.

Code of Civil Procedure (V of 1908)—O. 1 Rl. 10, O. 41 Rl. 20—Motor Vehicles Act (IV of 1939)—S. 110 A—Insurance Company filing appeal against the order of Tribunal—One of the claimants not impleaded as respondent in appeal—Application by appellant to implead such claimant as respondent—Application filed after expiry of limitation—Maintainability of such application—Power of Court to implead a respondent—Principles stated.

Held, that the application is not maintainable under O. 1 Rl. 10 of the Code of Civil Procedure, 1908. A proper provision to make addition of fresh parties in appeal is contained in O. 41 Rl. 20 of the Code. The appellate Court can add a person as a respondent if it is satisfied that a party interested in the result of the appeal was inadvertantly not made a party to the appeal. The addition can be made even after the expiry of limitation provided the Court is satisfied that the omission was not as a result of negligence of the applicant.

(Para 9).

Held, that the appellate Court has to exercise its power very cautiously. A person in whose favour the lower court has passed a decree against which an appeal has been filed, but who was not

impleaded as a respondent before the expiry of limitation a substantive right of valuable kind had accrued in his favour and should not be lightly treated.

(Para 9)

Held, that the circumstances of the case do not justify that one of the claimants Monu should be allowed to be arrayed as a party-respondent in the instant appeal after the expiry of limitation.

(Para 11).

First Appeal from order of the court of Shri Sarup Chand Gupta, Motor Accident Claims Tribunal, Ludhiana dated 5th October, 1983 accepting the application and entitling the claimants to a compensation of Rs. 1,19,000. The said amount is apportioned among the petitioners as follows:—

1. *Smt. Charanjit Kaur Rs. 50,000.*
2. *Sonu (minor son) Rs. 17,000.*
3. *Rinku (minor daughter) Rs. 17,000.*
4. *Monu (minor son) Rs. 17,000.*
5. *Smt. Kundan Kaur Rs. 18,000.*

The amount of Rs. 1,19,000 awarded as compensation shall be paid by the insurance company in the first instance within three months from the date of the order failing which the company shall be liable to pay interest at 6 per cent per annum with effect from 15th December, 1981 the date of the application. The amount of the shares of the minors shall be deposited in some Nationalised Bank in the fixed deposit accounts, through their mother Charanjit Kaur and the amounts shall be renewed from the time these amounts shall be paid to them on the attaining the ages of majority, However, if Charanjit Kaur needs any amount earlier to be spent in their welfare she would be entitled to withdraw the same, but with the previous permission of the court of Competent jurisdiction.
CLAIM : Petition under section 120-A of the Motor Vehicles Act.
CLAIM IN APPEAL : For reversal of the order of the lower court.
CROSS OBJECTIONS NO. 40 CII of 1984

Cross Objections under Order 41 Rule 22 of C.P.C. praying that the Cross Objections may be allowed and the compensation be enhanced to the extent as originally claimed against the respondents with costs and interest at the rate of 18 per cent from the date of accident till payment.

Mr. L. M. Suri, Advocate, *for the appellant.*

Mr. M. B. Singh, Advocate, *for the respondents.*

JUDGMENT

G. R. Majithia, J.

(1) This appeal is directed against the award of Motor Accident Claims Tribunal, Ludhiana, dated October 5, 1983 at the instance of the New India Assurance Company.

(2) Briefly, the facts are that Bhupinder Singh deceased, was employed as a Manager with the Khanna Co-operative Marketing Society. He was 32 years of age on the date of accident. On the fateful day i.e. September 23, 1981 at 7.30 P.M. he was going on scooter bearing registration No. DNI-1147 from Khanna City to the new Grain Market, Khanna. When he reached near the turning point, heading to the New Grain Market, he gave a signal to turn the scooter. Bus No. PJL-1137 came from Ludhiana side. Satpal Singh respondent No. 6, was driving this bus rashly and negligently at a very fast speed. He did not blow any horn. He struck the bus against the scooter. As a result of the impact the scooter was hit on the front portion causing instantaneous death of Bhupinder Singh.

(3) The respondents namely, the owner of the vehicle Sheikhupura Transport Co. (P) Ltd. and the driver of the vehicle who was in the employment of the said company, denied the allegations of the claimants and pleaded that the deceased was responsible for the accident. They, *inter alia,* pleaded that the deceased took a sudden turn when the bus was closeby. The driver of the bus could not avert the accident. The allegation that the bus was being driven rashly and negligently was denied.

(4) The Insurance Company denied that the bus was insured with it. Additionally, it also pleaded that it was driven by an unauthorised and unlicensed person at the time of accident and as such, it was not liable to pay any compensation. In the alternative, it was pleaded that liability of the insurance company was to the extent of Rs. 50,000.

(5) The learned Tribunal framed the following issues arising from the pleadings of the parties :—

1. Whether the claimants are the legal heirs of Bhupinder Singh deceased ? OPA

2. Whether the accident in which Bhupinder Singh died was caused by the rash and negligent driving of bus No. PJL-1137 by Sat Pal respondent No. 2 as alleged ? OPA.

3. To what amount of compensation the applicants are entitled and from whom ? OPA.

4. Whether Bus No. PJL-1137 was insured at the time of accident with respondent No 3, if not to what effect ? OPA.

5. Relief.

Under issue No. 1, the learned Tribunal found that Smt. Charanjit Kaur was widow of the deceased; Sonu and Rinku son and daughter respectively were the progenies of the deceased. Monu was born to Smt. Charanjit Kaur after the death of her husband. Smt. Kundan Kaur was the mother of the deceased. Under issue No. 2, the learned Tribunal found that the accident was caused as a result of rash and negligent driving of bus bearing registration No. PJL-1137 by its driver Sat Pal Singh.

(6) The learned Tribunal determined the dependency of the claimants at Rs. 624 per month. The deceased was aged 34 years at the time of accident. He applied a multiplier of '16' years and held that the claimants are entitled to Rs. 1,19,000 as compensation. He further found that the liability of the Insurance company was upto Rs. 3,00,000 under the policy of insurance and the compensation amount was payable by the Insurance Company with interest at the rate of 6 per cent per annum.

(7) The claimants also filed cross-objections. They claimed that the Tribunal was in error in holding that the monthly salary of the deceased was Rs. 976 only. It was more than Rs. 1,000 per month. They claimed that they are entitled to interest at the rate of 18 per cent per annum. The learned counsel for the Insurance company did not dispute the accident or the manner in which it was occurred. It only raised a dispute regarding the quantum of compensation and argued that the Insurance Company was only liable to the extent of Rs. 50,000. The balance amount has to be paid by the owner of the vehicle and its driver.

(8) The arguments in the case were heard on October 7, 1988. It was detected by me that Monu who was co-claimant was not impleaded as a party—respondent in the appeal. I posted this case for

rehearing. Learned counsel for the Insurance Company sought permission to file an application to implead Monu co-claimant as party respondent in the appeal. He moved application under Order 1 rule 10 of the Code of Civil Procedure (Civil Misc. No. 5353-CII of 1988). The same is also being disposed of by this judgment.

(9) The appellant-Insurance Company stated in the application that Monu was not impleaded as a respondent because of typographical error. The memorandum of parties was prepared on the basis of original claim application filed by the claimants. The application is not maintainable under Order 1 rule 10 of the Code. A proper provision to make addition of fresh parties in appeal is contained in Order 41 rule 20 of the Code. The appellant Court can add a person as a respondent if it is satisfied that a party interested in the result of the appeal was inadvertantly not made a party to the appeal. The addition can be made even after the expiry of limitation provided the Court is satisfied that the omission was not as a result of negligence of the applicant. It will be useful to reproduce the provisions of Order 41 Rule 20 of the Code of Civil Procedure :—

> "20. Power to adjourn hearing and direct persons appearing interested to be made respondents—(1) Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.
>
> (2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit".

The appellate Court has to exercise its powers very cautiously. A person in whose favour the lower Court has passed a decree against which an appeal has been filed, but who was not impleaded as respondent before the expiry of limitation a substantive right of valuable kind had accrued in his favour and should not be lightly treated.

(10) Monu was a necessary party to the appeal. He had an award of the Tribunal in his favour. If necessary parties have not been impleaded, the effect of non-joinder in the appeal is fatal to the appeal because in such cases there is no proper appeal before the Court. His name appeared in the array of parties in the award of the Tribunal and there is a specific reference to him in the body of the award.

(11) The circumstances of the case do not justify that Monu should be allowed to be impleaded as a party—respondent in the instant appeal after the expiry of limitation and I do not find any justifiable reason for allowing him to be impleaded as a party—respondent after the expiry of period of limitation. The following observations of the Apex Court in the judgment reported as *Ch. Surat Singh (Dead) and others* v. *Manohar Lal and others* (1), are very relevant to the facts of the instant case:—

> "Court observed that in present appeals, Col. Yadav has not been made a party. The only explanation offered for not making him a party is that the judgment did not show clearly that Lt. Col. Yadav was a party to the appeals. The fact that he was impleaded as a party in the appeals was undoubtedly within the knowledge of the appellants. Appellants have not shown any good ground for not impleading Lt. Col. Yadav as a party in the appeal. He is a necessary party to the appeals. Appeals dismissed."

I accordingly dismissed the application (Civil Misc. 5353-CII of 1988).

(12) However, I make it clear that if a party to the original proceedings is not impleaded in appeal on account of a *bona fide* or honest mistake the appellate Court has ample power to rectify the mistake.

(13) Even otherwise, the facts of the case do not justify any interference in the award at the instance of the Insurance Company. It has taken inconsistent pleas and also the defences which are false. The appellant-company pleaded that the vehicle was not insured with it and that it was being driven by an unauthorised and unlicensed

(1) 1970 U.J. (Supreme Court) 793.

person. Both these pleas were found to be baseless. In the light of this, I do not find any good ground for interference with the well reasoned award of the Tribunal.

(14) The claimants have also filed cross-objections. No meaningful argument could be addressed by the learned counsel for the claimants-respondents that the compensation amount awarded was inadequate or there is any error in the conclusion arrived at by the learned Tribunal while determining the dependency of the claimants. However, I find that the Tribunal erred in awarding the interest on the amount awarded as compensation, at the rate of 6 per cent per annum. This Court has been awarding interest on the amount of compensation at the rate of 12 per cent per annum and I do not find any good ground for making any deviation in the instant case. Accordingly, I maintain the award but modify it to the extent that the claimants are entitled to the amount of compensation awarded, with interest at the rate of 12 per cent per annum from the date of application till realisation. However, in the circumstances of the case, I leave the parties to bear their own costs.

S.C.K.

Before : V. Ramaswami, C.J. and G. R. Majithia, J.

BANTO RAM AND OTHERS,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 10800 of 1988

April 12, 1989.

Constitution of India, 1950—Arts. 226 and 227—Requisitioning and Acquisition of Immovable Property Act (of 1952)—S. 8(1) (h)—Delay and laches—Compensation payable for acquired land could not be fixed by agreement—Statutory obligation to appoint arbitrator—Arbitrator not appointed—Petitioners filing writ after 18 years—Such inordinate delay—Whether the petitioners precluded from claiming writ.

Held, that this Court will be disinclined to exercise its discretionary powers under Arts. 226/227 of the Constitution of India, 1950 on the ground of laches. The authorities under the Act have to appoint an arbitrator if the compensation payable for the acquired land could not be fixed by agreement but if the authorities failed to