

(2000) 08 PAT CK 0082

In the Patna High Court

Case No : M.A. No's. 242, 278 and 494 of 1999

National Insurance Co. Ltd. and Another

APPELLANT

Vs

Layachi Devi and Others
 Oriental Insurance Co. Ltd.

RESPONDENT

Vs Smt. Jaisundar Devi and Others
 The New India
Assurance Co. Ltd. Vs Kanhai Rai and Others

Date of Decision : 22-08-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173, 92A, 92A(1)

Citation : (2001) 1 PLJR 49

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : M.P. Jaiswal, in M.A. No. 242 of 1999, Ajay Kumar, in M.A. No. 278 of 1999 and R.K. Prasad Singh, in M.A. No. 494 of 1999, for the Appellant; Narendra Kumar in M.A. No. 242 of 1999, S.N. Yadav in M.A. No. 278 of 1999, Renu Jha, Seema, Mukesh Prasad Singh and Prakash Kumar, in M.A. No. 494 of 1999, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—As in these cases a common question of law is involved, with consent of the parties they have been heard together and being disposed of by this common order.

2. The only point to be decided in these appeals is as to whether Motor Vehicle Accident Claims Tribunal can direct the Insurance Company to pay interim compensation as contemplated u/s 140 of the Motor Vehicle Act, 1988.

3. The facts are somewhat similar in all the cases. After preferring claims u/s 166 of the Act, the respective claimants filed petitions before the Tribunal u/s 140 of the Act claiming therein to pay interim compensation. In all the cases the tribunal allowing the prayer of the claimants directed the Insurance Company to pay the amount of interim compensation.

4. The grievance of the counsel appearing on behalf of the Insurance Company in

all the appeals is that u/s 140 of the Act the Tribunal can only direct the owner of the respective vehicle to pay the compensation till final adjudication of the claim cases and no responsibility can be fastened on the Insurance Company. In support of their contention the learned Counsel have relied on the decisions reported in 1995 B.B.C.J. 419 and K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., .

5. In a case reported in K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., the Supreme Court has held that by reason of Sub-section (1) of Section 92A (which is equivalent to Section 140 of the New Act) an absolute liability is cast upon the owner of a Vehicle to pay compensation in respect of death or permanent disablement resulting from an accident arising out of its use. Other provisions of Section 92A has been discussed by their lordships.

6. Learned Counsel appearing on behalf of the claimants-Respondents though could not dispute the settled principle of law but have submitted that these matters can be adjudicated by the Tribunal while disposing of the amount of claim applications.

7. In my view this argument cannot be accepted. When the law does not empower the Tribunal to direct the Insurance Company to pay interim compensation as contemplated u/s 140 of the Act the impugned order cannot be sustained in law. The Tribunal could have directed the owner of the respective vehicle after giving them opportunity for payment of such compensation but by no stretch of imagination the Tribunal could have asked the Appellant-Insurance Company to pay the said amount.

8. In the result, all the appeals are allowed and the impugned order dated 29.1.1999 passed in Claims Case No. 30 of 1995, dated 24.3.99 passed in Claims Case No. 101 of 1998 and dated 25.6.99 passed in Claims Case No. 93 of 1998 are hereby set aside.

9. The Respondents-claimants, if so advised may file petition before the Tribunal for passing necessary orders u/s 140 of the Act.

10. Since the appeals have been allowed, the Appellants are at liberty to file application for withdrawal of the statutory amount which was deposited before the Registry of this Court u/s 173 of the Act.