

(1998) 12 PAT CK 0004
In the Patna High Court
Case No : M.A. No. 89 of 1997

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Neela Singh and Others

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Motor Vehicles Act, 1939 — Section 92A, 92B
Motor Vehicles Act, 1988 — Section 140, 140(1), 141, 173

Citation : (1999) 3 PLJR 489

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Harendra Kumar Singh, for the Appellant; Ajay Kumar Thakur, Respondents 1 to 4, for the Respondent

Judgement

Gurusharan Sharma, J.—Heard the parties and with their consent this appeal is disposed of at the stage of hearing under Order 41 Rule 11 of the Code of Civil Procedure.

2. Admittedly, one Ratneshwar Prasad Singh lost his life in a motor accident. The truck, bearing registration No. B.R.A. 9013, owned by Maheshwar Prasad Singh, Respondent No. 5 was involved in the accident. Heirs of deceased filed Claim Case No. 5 of 1995, under the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). A petition u/s 140 of the Act was filed for grant of interim compensation, which was allowed by the impugned order dated 9.8.1996. By that time, owner of truck had not appeared in the claim case. However, the Tribunal directed the owner/insurer of the truck to pay a sum of Rs. 50,000/- as interim compensation to the claimants. Against the said order the insurance company has filed the present appeal u/s 173 of the Act, on the ground that at this stage the owner and not the insurer was required to pay the compensation amount.

3. On a close scrutiny of the provisions of Sections 140 and 141 of the Act, I do

not find anything contained therein, which would suggest that the liability which accrues under the provisions of Section 140 has to be borne by the insurer. By reason of Sub-section (1) of Section 140, an absolute liability is cast upon the owner of the vehicles to pay compensation.

4. In National Insurance Company Ltd. v. Jethu Ram and Ors. Civil. Appeal Nos. 11989 and 11994 of 1996, disposed of recently on 22.7.1998 the apex court in the aforesaid situation held that there was no liability on the insurer to pay the compensation, accruing under the "provisions of Sections 92A and 92B of the Motor Vehicles Act, 1939. Sections 140 and 141 are the corresponding provisions under the present Act.

5. In spite of notice in the present appeal, the owner of the vehicle, namely, the Respondent No. 5 did not appear. The impugned order is, therefore, modified to the extent that interim compensation of Rs. 50,000/- with interest @ 12% per annum from the date of claim application till payment is payable by the owner of the vehicle. The tribunal must take necessary steps to ensure the payment.

6. It is reported that 22.12.1998 is the next date fixed in the claim case. The tribunal is directed to fix a firm date on 22.12.1998 to proceed with its ex-parte hearing, as against the owner/driver, if they have not appeared in spite of valid service of summons, on day to day" basis and dispose it of positively within three months.

7. I.A. No. 1535 of 1998 at flag "C filed on behalf of the claimants-Respondents for withdrawal of the statutory amount, under proviso to Section 173 of the Act deposited by the Appellant-Insurance Company for the purpose of this Appeal is, therefore, rejected and the said amount deposited, vide chalan No. 23 dated 15.4.1997 in this Court is allowed to be withdrawn by the Appellant on proper verification and in accordance with law.

8. This appeal is disposed of with the aforesaid modification and direction.