(2001) 08 PAT CK 0089

In the Patna High Court

Case No : M.A. No. 288 of 1999

New India Assurance Co. Ltd. APPELLANT

Vs

Fida Hussain and Another RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Citation : (2001) 08 PAT CK 0089

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—Heard the learned Counsel for the appellant and the learned Counsel appearing for respondent No. 1.

2. In this appeal, the appellant insurance company has assailed the validity of the order dated 10.3.1999 passed u/s 140 of the Motor vehicles Act directing payment of Rs. 50,000 as interim compensation by issuing cheque in the name of the claimant, Fida Hussain, the father of the deceased, within 60 days from the order, failing which he will also become entitled to receive interest on the said amount at the rate of 16 per cent per annum from the date of the order.

3. It has been submitted on behalf of the appellant that in absence of a claim by filing application for compensation u/s 166 of the Motor Vehicles Act, the claim u/s 140 cannot be entertained independently. In support of this, learned Counsel for the appellant has relied upon a decision of the learned single Judge in the case of Oriental Insurance Co. Ltd. v, Chulchul Devi, 1999 (1) PLJR 747.

4. This court is unable to accept the said submission of the learned Counsel for the appellant. The provision of Section 140 relates to liability to pay compensation in certain cases on the principle of no fault; whereas u/s 166 an application for compensation can be made on an accident of the nature specified in Sub-section (1) of Section 165. In my opinion, non-filing of claim u/s 166 will not exempt the owner/insurance company of its liability to pay compensation in certain cases on the principle of no fault covered by Section 140.

5. A Division Bench of this Court in the case of Kanhai Rai and Others Vs.

Dharampal and Others , has held that:

To maintain a claim of interim compensation, the negligence/default on the part of the victim is no ground to deny the interim compensation. Once an insurance policy is in force with regard to use of motor vehicle at a public place covering liability against third party risk, then the insurer is also liable to pay the interim compensation even though he is not classified as one of the persons against whom an order can be passed u/s 140. If ultimately it is found at the time of final determination of question of compensation that the insurer is not liable to pay compensation, then an order can be passed for the reimbursement of the amount from the owner.

6. Thus, in view of the principle laid down by the Division Bench a claim for interim compensation is maintainable irrespective of any inquiry in regard to negligence/default on the part of the victim in order to determine the final claim made u/s 166.

7. This court, thus, does not find any merit in this appeal and the same is, accordingly, dismissed.

8. It is informed by the learned Counsel appearing for the appellant that a sum of Rs. 25,000 has been deposited in this Court by deposit No. 139 dated 5.7.1999 for part payment of the compensation award by the impugned order.

9. Accordingly, this Court directs that respondent No. 1 will be entitled to draw the said amount and the appellant shall pay the remaining amount of compensation on receipt of a copy of this order.

