

(2018) 07 PAT CK 0002

In the Patna High Court

Case No : Miscellaneous Appeal No.332 of 2013

New India Assurance Com. Ltd.

APPELLANT

Vs

Shekhar Bhagat

RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Motor Vehicles Act, 1988 &mdah; Section 140, 163A, 166
Indian Penal Code, 1860 — Section 279, 304A
Code of Civil Procedure, 1908 — Order 2 Rule 2

Citation : (2018) 07 PAT CK 0002

Hon'ble Judges : PRAKASH CHANDRA , J

Bench : Single Bench

Advocate : Arun Kumar Singh, N. C. Verma, Natraj Verma

Final Decision : Disposed off

Judgement

1. Heard learned counsel for the appellant and learned counsel for the respondent nos. 3 and 4 on this miscellaneous appeal. None turned up on behalf of respondent nos. 1 and 2 to advance argument in this appeal despite putting appearance in the case and filing vakalatnama.

2. This miscellaneous appeal has been preferred against the judgment dated 18.01.2013 and award dated 01.03.2013 passed by the Additional District

Judge-I cum Motor Vehicle Accident Claim Tribunal, Madhepura in MACT Case No. 7 of 2001 whereby the learned Tribunal allowing the claim

petition directed the opposite party no.3-New India Assurance Company Limited to pay compensation to the tune of Rs. 13,88,400/- along with the

interest at the rate of 6% per annum from the date of filing claim petition till its realisation to the claimants.

3. Factual matrix of the case is that claimants-respondent nos. 1 and 2 filed MACT Case No. 7 of 2001 under Section 166 of the M.V. Act on

account of death of one Rahul Kumar and sustaining injury by Gayatri Devi in the motor vehicle accident with the case in succinct that on 28.11.2000,

said Rahul Kumar and Gayatri Devi were crossing the road near Ganesh Asthan from North to South. In the meantime, a truck bearing Registration

No. BR-1G-6206 being driven rashly and negligently by its driver dashed them and crushed leg of Rahul Kumar, resultantly both were seriously injured

and they fell senseless. Both were rushed to Sadar Hospital, Saharsa to accord medical aid, but Rahul Kumar was declared brought dead by the

doctor and Gayatri Devi was referred to Patna for better treatment after according her first-aid. Gayatri Devi was treated in Ram Ratan Hospital,

Patna for quite long time and her left leg was amputated. Aforesaid accident took place due to rash and negligent driving of the offending vehicle by

its driver at the relevant time of accident. Regarding the aforesaid accident, Madhepura P.S. Case No. 265 of 2000 was instituted under Sections 279

and 304A of the Indian Penal Code against the driver of the offending vehicle. Further case of the claimants is that the deceased Rahul Kumar was

aged about 4 years while injured Gayatri Devi was aged about 27 years at the time of accident and she was earning Rs. 3000/- per month by

preparing rice out of the paddy grains and other eatable materials. Due to aforesaid accident, she has become permanently disabled as her left leg has

been amputated.

4. Opposite party nos. 1 and 2 did not file any written statement despite service of notice and the case proceeded ex parte against them. Only

Opposite party no.3 filed its written statement. Claimants also adduced ocular as well as documentary evidence in buttress of their case.

5. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as detailed in the earlier

paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment and award, Opposite party no.3-New India Assurance Company Limited has

preferred the present miscellaneous appeal.

7. At the threshold of the argument, learned counsel for the appellant submitted that earlier to filing MACT Case No. 07 of 2001 under Section 166 of

the M.V. Act, the claimants have filed independent petition under Section 140 of the M.V. Act vide Claim Case No. 3 of 2001 and the said petition

was allowed and the appellant was directed to pay ad interim compensation to the tune of Rs. 75,000/- to the claimants. After filing of the aforesaid

petition under Section 140 of the M.V. Act, claimants filed separate petition under Section 166 of the M.V. Act which is not maintainable and is liable

to be rejected on this very ground. Appellant has taken the aforesaid case in the court below as evident from the impugned Judgment itself. Learned

counsel for the appellant has relied upon the verdict of this Court rendered in Veena Devi and Others Vs. Ram Nandan Prasad and Others reported in

2013 (2) PLJR 123 in buttress of its case.

8. Learned counsel for the respondent nos. 3 and 4 did not counter the aforesaid submission of the appellant to the effect that earlier to the MACT

case No. 7 of 2001, the claimants had filed independent petition under Section 140 of the M.V. Act for according ad interim compensation and said

case was disposed of vide order dated 15.07.2002.

9. From perusal of the impugned judgment, it appears that earlier to filing of MACT Case No. 07 of 2001 under Section 166 of the M.V. Act,

claimants had filed independent petition under Section 140 of the M.V. Act vide Claim Case No. 03 of 2001 for awarding ad interim compensation to

the tune of Rs. 50,000/- on account of death of Rahul Kumar and Rs. 25000/- due to injuries sustained by Gayatri Devi in the aforesaid motor vehicle

accident. Aforesaid Claim Case No. 03 of 2001 was decided on 15.07.2002 and Opposite Party No.3-appellant was directed to pay ad interim

compensation to the tune of Rs. 50,000/- on account of death of Rahul Kumar and Rs. 25,000/- on account of injury to the Gayatri Devi in the

aforesaid accident. Claimants have also filed certified copy of the aforesaid order dated 15.07.2002 in the case as Exhibit-10.

10. Though the claimants under the Act have been provided opportunities to come forward for redressal of their grievances under different provisions

of the Act based on principle of fault or no fault, but at the same time, they are precluded from proceedings simultaneously/independently under

different Sections of the Act. Once a claim based on principle of no fault under Section 140 of the Act is opted the claimants have further been

precluded from coming forward for their claims under Section 166 of the Act based on the principle of on fault. The intention of the law makers

appears very much clear that there be no scope left for multiplicity of the

proceedings, in creating undue burden upon the system which to cope with the pressure started taking shelter of alternative dispute redressal system but still is heavily burdened and thus, the claimants are not entitled to stretch the owner of the offending vehicle or the insurer under series of litigations for same accident/cause of action, they are bound to take a decision and opt for anyone of the options suitable to them. No doubt in order to provide benefits at the earliest there is provision to bring an application under Section 140 of the Act, as a component to the main application, under other provisions of the Act, by way of ad interim compensation, but when the claimants choose to come forward under Section 140 of the Act independently not as composite application, they are not only debarred from coming forward under Section 163A of the Act for structural compensation on the principle of no fault but also under Section 166 of the Act. Which also appears in consonance with the principle enunciated in Order II Rule 2 of the Code of Civil Procedure, stated below.

â??2. Suit to include the whole claim â??

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

11. This court in Veena Devi (supra) has been pleased to rule that â??in order to provide benefits at the earliest there is provision to bring an application under Section 140, as a component to the main application, under other provisions of the Act, by way of ad interim compensation, but when the claimants choose to come forward under Section 140 independently not as a composite application, they are not only debarred from proceeding under Section 163A for structural compensation on the principle of no fault but also under Section 166.

12. In the facts and circumstances of the case and in view of the aforesaid case law, impugned judgment and award passed by the learned Tribunal is

set aside and the case is remitted back to the learned Tribunal to decide it afresh considering the aforesaid aspect of the case in accordance with law.

13. Accordingly, present miscellaneous appeal is disposed of and learned Tribunal is directed to dispose of the case as expeditiously as possible

preferably within two months from the date of receipt/production of a copy of this order.

14. Let the statutory amount deposited by the appellant be returned to it through cheque.