

(1994) 04 PAT CK 0024
In the Patna High Court
Case No : Civil Revision No. 321 of 1994

Sri Vidya Sagar Singh

APPELLANT

Vs

Shanti Devi and Others

RESPONDENT

Date of Decision : 05-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 140, 165, 173

Citation : (1994) 2 PLJR 820

Hon'ble Judges : N.P. Singh, J

Bench : Single Bench

Advocate : Amla Kant Choudhary and Udayan Choudhary, for the Appellant;
Baleshwar Prasad Gupta, for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, J.—Heard Shri Udayan Choudhary learned Counsel for the Petitioner and Shri B.P. Gupta Counsel for the O.P.

2. This revision application is directed against the order dt. 4.2.94 passed by the Claims Tribunal, Hajipur, Vaishali in Claims Case No. 34/94/11/93 u/s 140 of Motor Vehicles Act, 1988 (hereinafter referred as the "M.V. Act"), whereby he passed order for interim compensation of Rs. 25,000/- to the claimant C.P.

3. The claimant O.P filed an application u/s 165 of the M.V. Act for compensation, on account of death of her husband, Bachcha Prasad Singh, father of C.P. Nos. 2 to 5 on account of his death in an accident with Bus bearing Regd. No. BRD 7879. The claimants also filed a separate petition u/s 140 of the M.V. Act for interim compensation.

4. Pursuant to the notice, the petitions, owner of Bus bearing regd. No. BRD 7879 appeared and denied the involvement of this Bus in the accident. The claims tribunal however rejected the objection raised by the Petitioner and passed order for payment of interim compensation to the true of Rs. 25,000/- to

the claimant O.P. on the basis of the statement of witnesses recorded in course of investigation of the Police case wherein the witnesses stated that the deceased died on account of accident with Bus bearing Registration No. BHD 7879.

5. An objection was raised on behalf of the O.P. about the maintainability of the revision application. Learned Counsel for the O.P. contended that no revision will lie against the order passed u/s 140 of the M.V. Act rather appeal will lie. The contention of Shri Gupta is not well founded.

6. On a plain reading of Section 140 of the M.V. Act it is manifest that the order passed thereunder is an interim order and not a final award. An appeal lies u/s 173 of the M.V. Act against a final award and act against an order for payment of interim compensation passed u/s 140 of the M.V. Act. The impugned order passed u/s 140 of the M.V. Act, being an Interim order is, therefore, not appealable rather it is amenable u/s 115, Code of Civil Procedure.

7. As regards payment of interim compensation to the claimants O.P. is concerned, learned Counsel for the Petitioner contended that the Petitioner had denied the involvement of his Bus in the accident which resulted in death of the deceased. But the Claims Tribunal passed order for payment of interim compensation without holding enquiry as to which of the bus was involved in the accident. The impugned order is, therefore, bad in law.

8. Reliance was also placed in the case of Oriental Fire Department General Insurance Co. Ltd. v. Smt. Beasa Devi and Ors. AIR 1985 (P & H) 96, wherein it has been held that if the owner of the vehicle denies the involvement of his bus, interim compensation can not be awarded without a positive finding on the evidence adduced by the parties.

9. In the F.I.R. lodged against the accident, the Informant has alleged that the deceased died on account of accident with bus bearing Regd. No. BHD 7879 whereas the Petitioner is owner of Bus bearing Regd. No. BRD 7879.

10. The Claims Tribunal has passed order for payment of interim compensation on the basis of statement of witnesses recorded in course of investigation of the Police case, without holding enquiry as to which of the bus was, in fact, involved in the accident. The impugned order is therefore, a jurisdictional error and, therefore, it cannot be sustained.

11. Accordingly, it is set aside and in the result the petition is allowed. The Claims Tribunal is directed to hold an enquiry and pass appropriate orders afresh in accordance with law expeditiously, preferably within three months from the date of receipt/production of copy of this order.