

(1996) 09 PAT CK 0047

In the Patna High Court

Case No : Appeal from Original Order No. 188 of 1996

Surya Jyoti Devi and Others

APPELLANT

Vs

Krishna Kumar Singh and Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 92A, 92A(1)
Motor Vehicles Act, 1988 — Section 140

Citation : (1997) 1 PLJR 912

Hon'ble Judges : Ravi Nandan Sahay, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant; S.K. Majumdar, Shiva Shankar Pd. Singh, Virendra Sharma and Sarwan Kumar, for the Respondent

Final Decision : Allowed

Judgement

Ravi Nandan Sahay, J.—The Additional Motor Vehicle Accident Claims Tribunal disallowed the Appellant's application for interim compensation u/s 140 of the Motor Vehicles Act for the reasons given in para-5 of the order under appeal. The Tribunal has expressed doubt as to whether Mini Bus No. BRC 5129 was involved in the accident at all.

2. In order to show that this vehicle was involved in the accident, the Appellants have referred to paragraphs 4 and 5 of the order. The Tribunal was not fully convinced about the involvement of this vehicle in the accident.

3. Learned Counsel for the Appellants has relied on two decisions of the Supreme Court to support his contention that the proceeding u/s 140, M.V. Act is a summary proceeding, where such plea cannot be raised. In Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , the Supreme Court held that for disposing of the application u/s 92A of the Motor Vehicle Act (now Section 140 of the Act), the Tribunal is not required to hold regular trial in the same manner as for adjudicating a claim petition u/s 110A of the Act.

4. In the recent judgment of the Supreme Court in K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., , it was held that by reason of Sub-section (1) of Section 92A, 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.

5. In the instant case, F.I.R. was lodged by the Chaukidar on 23.1.1995 at 14.15 P.M., according to which Bus No. BRC 5129 had collided with the Jeep in which several persons were travelling including the deceased. The Bus in question was seized and released in favour of the owner of the Bus. Charge sheet has also been submitted. According to the case of the Appellants, the liability to pay interim compensation is upon the owner of the Jeep as the driver of the said vehicle was responsible for the accident.

6. According to the owner of the bus, the Jeep carrying the deceased had dashed against a tree and there was never any collusion between the Jeep and the Bus. It is alleged that the owner of the Jeep in connivance with the claimants brought a false case against the owner of the bus. It was also contended that no damage was caused to the Bus. Hence, the involvement of Bus was absolutely ruled out. The case of Bus owner is that the Bus was not in running condition and the tax of the bus was also not paid and the bus was parked at By-Pass road near Sharma Hotel at Ganga Setu.

7. In my opinion, these are matters which ought to be considered at the time of final adjudication and not at the time of deciding interim compensation. There appears to be prima facie evidence of involvement of the bus. The tribunal erred in coming to the conclusion without evidence being led that there is a doubt about the involvement of the bus in the accident, in an application u/s 140 M.V. Act.

8. This appeal is accordingly allowed and the order of the Tribunal is set aside. The Respondent No. 1 is directed to deposit interim compensation of Rs. 50,000/- with interest within four weeks, which the claimants are entitled to withdraw on furnishing proper security to the satisfaction of the trial court.

9. However, the main question to be decided as to whether the Mini Bus in question was at all involved in the accident or due to rash and negligent driving of the Jeep the accident took place and the owner of the bus was falsely implicated in this case. The Tribunal has expressed doubt about the involvement of the bus for the reasons stated in the order. In the peculiar facts and circumstance of the case, I direct the Additional Claims Tribunal to dispose of the claim case within four weeks of production of this order. The parties are directed to appeal before the Additional Claims Tribunal with their witnesses with a copy of this order on or before 30th September, 1996. The Tribunal shall also decide whether it would be proper for the owner to lead evidence first. However, there shall be no order as to costs.