
(2005) 03 GAU CK 0079

In the Gauhati High Court

Case No : Civil Revision Petition No. 18 of 1999

Swapan Kr. Paul

APPELLANT

Vs

Abala Rani Nath and Others

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Section 115
Motor Vehicles Act, 1988 — Section 140, 140(5), 163A, 166

Citation : (2006) 1 GLR 758

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : D.R. Choudhury, K.G. Bhowmik and S. Debnath, for the Appellant; B. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—This revision has arisen out of an order, dated 27.8.1997, passed u/s 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "M.V. Act"), in T.S.(MAC) No. 12/95, by the learned Member, Motor Accident Claims Tribunal (Third), North Tripura, Dharmanagar, directing the present petitioner, as the owner of the offending vehicle, to pay compensation of an amount of Rs. 50,000 to the claimants, who are 4(four) in numbers and legal representatives of deceased Ramkumar Nath, who died in a motor vehicular accident.

2. I have heard Mr. D.R Choudhury, learned Counsel for the petitioner. I have also heard Mr. B. Bhattacharjee, learned Counsel for the respondent No. 2.

3. While considering this revision, what needs to be noted is that the claimants-opposite parties had made an application u/s 166 of the M.V. Act seeking compensation for the death of Ramkumar Nath, who, while travelling in the offending vehicle, had died, and, pending determination of this application, the claimants also made an application u/s 140 of the M.V. Act seeking compensation, on the principle of no fault, for the death of the said deceased.

4. On hearing learned Counsel for the parties on the above application, the learned Tribunal, vide the impugned order, dated 27.8.1997, aforementioned, concluded that the vehicle, in question, was not covered by any insurance policy and accordingly directed the present petitioner, as owner of the said vehicle, to pay compensation of Rs. 50,000. It is this direction as indicated hereinabove, which stands impugned in the present revision.

5. While considering the present revision, it is of utmost importance to note that an application u/s 140 of the M.V. Act may be made pending disposal of an application made u/s 166 or Section 163A. If any order for payment of compensation on the principle of no fault is made u/s 140, the same shall be in terms of the proviso to Sub-section (5) of Section 140 and the same shall also be subject to the final decision on the application made u/s 166 or Section 163A, as the case may be. Viewed from this angle, the compensation, so awarded, u/s 140 will be an interim order. However, when an application is made u/s 140 simplicitor and no further application is made u/s 166 or Section 163A, the order made u/s 140 would be a final order. In other words, when an order is made u/s 140 pending disposal of the application for compensation made u/s 166 or Section 163A, such an order will be an interim order.

6. In the case at hand, the learned Tribunal has directed the present petitioner to pay the compensation on the principle of no fault and since this direction is interim and inconclusive by nature and as the same does not decide the lis or the dispute between the parties concerned, such an interim or inconclusive order is no longer revisable u/s 115 of the CPC (Amendment) Act, 2002 (hereinafter referred to as "the Code of 2002"). (See Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, and Surya Dev Rai Vs. Ram Chander Rai and Others,

7. It may also be noted that though the impugned order was passed before coming into force of the Code of 2002, the revisional powers contained in Section 115 cannot be exercised, for, the revisional power u/s 115 of the Code of 2002 can, now, be exercised in terms of the provisions of the presently amended Code only and not in accordance with the provisions of Section 115 as the same existed before coming into force of the Code of 2002. Viewed from this angle, it is dear that though the impugned order was passed before coming into force of the Code of 2002, the same would be governed by the Code of 2002 and such an order, being interim in nature, is not maintainable (see Shiv Shakti Co-operative Housing Society (supra)).

8. In the result and for the foregoing reasons, this revision petition fails and the same shall accordingly stand dismissed.

9. No order as to costs.

10. Send back the LCRs.