
(1998) 02 PAT CK 0005
In the Patna High Court
Case No : A.F.O.O. No. 79 of 1991

The New India Assurance Co. Ltd.

APPELLANT

Vs

Mostt. Parvati Kuer and Others

RESPONDENT

Date of Decision : 09-02-1998

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1988 — Section 140, 217

Citation : (1998) 3 BLJR 1799

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gurusharan Sharma, J.—While travelling on roof of Bus, bearing Registration No. BRF-9851, on 17.6.1988, one Hira Singh of village Dighi Kalan, District-Vaishali, was struck with branch of a tree and died. On behalf of widow and minor children of the said deceased, Claim Case No. 2A of 1988, u/s 110-A of the Motor Vehicles Act, 1939 was filed for compensation.

2. In the said claim case an application u/s 92-A of the Act was filed for interim compensation. By order dated 2.2.1990, the Tribunal granted ad-interim compensation to the tune of Rs. 15000/- payable by the owner of the vehicle.

3. On 25.6.1990, the Insurance Company-appellant was added as party in the claim case.

4. However, by the impugned order dated 21.1.1991, the Tribunal reviewed its earlier order dated 2.2.1990 and enhanced the amount of ad-interim compensation from Rs. 15000/- to Rs. 25000/- and directed the insurer to pay the same.

5. In the present case, the accident took place on 17.6.1988, when the Motor Vehicles Act, 1939 (hereinafter referred to as the "Old Act") was in force. Thereafter, Motor Vehicles Act, 1988 (hereinafter referred to as the "New Act")

came into force with effect from 1.7.1989. The claim application was instituted under the Old Act, but the order for ad-interim "compensation was passed after the New Act came into force.

6. The Old Act was repealed as per Section 217 of the New Act. Section 140 of the New Act is in part materta with Section 92-A of the Old Act. Proviso u/s 106(2) of the New Act is also similar to the proviso u/s 110-A(2) of the Old Act. Section 6(c) of the General Causes Act, 1897 provided that unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

In this regard reference may be made to a decision of the Apex Court in Ramesh Singh v. Chinta Devi 1996 (2) PLJR SC 3. In R.L. Gupta and Others Vs. Jupiter General Insurance Company and Others, , it was indicated that the New Act was prospective.

7. In this circumstance, in spite of repeal of the Old Act of 1939, the liability arising u/s 92-A was saved. The provision of Section 140 of the New Act cannot be made restrospectively applicable to the instant case of accident, which took place on 17.6.1988. In fact, it is the date of accident, which is relevant and the liability has to be discharged with reference to the statutory provisions of the Act, which was in force on the said date.

8. Merely because the application filed for seeking ad-interim compensation u/s 92-A of the Old Act was disposed of after the enactment of Section 140 sub-section(2) of the New Act, that can not create a fresh right in the claimants of liability against the owner or the insurer to pay additional amount of compensation. The right to receive compensation on the principle of "no fault liability" and the corresponding liability accrued on the date of accident is not dependent on the legislative changes that may take place during the pendency of the application seeking compensation.

9. In my judgment, it is not possible to affirm the impugned order that the claimants were entitled to ad-interim compensation of Rs. 25000/- as per the provisions of Section 140 of the New Act,

10. In the result, this appeal is allowed and the impugned order of interim award is modified to the extent that instead of Rs. 25000/-, the claimants shall be entitled to get Rs. 15000/- only. However, there will be no order as to costs.