(2001) 09 PAT CK 0074

In the Patna High Court

Case No : M.A. No. 519 of 1999

The New India Assurance Co. Ltd. — APPELLANT

Vs

Nathun Sao and Others — RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0074

Judgement

Radha Mohan Prasad, J.—This appeal is directed against the order dated 25-6-1999 passed in M.V. No. 28/5 of 1995/1998 by the 3rd Additional District Judge-Cum-Motor Accident Claims Tribunal, Aurangabad (Bihar) whereby and whereunder the learned Tribunal has held the appellant-Company liable for payment of ad interim compensation to the claimant and directed to pay Rs. 50,000/-as ad interim compensation for the death of Raju Kumar Agrawal, who met with an accident from a truck bearing No. BRB 6871 within a month of this order, failing which the Tribunal has held the claimant to be entitled to recover the amount of ad interim compensation with interest under due process of law.

2. Initially, learned Counsel for the appellant contended that the impugned order is bad in law inasmuch as the objection of the appellant that the deceased was a gratuitous passenger has not been considered and awarded the interim compensation u/s 140 of the Motor Vehicles Act m violation of the decision of this Court in the order dated 17-2-1999 passed in Miscellaneous Appeal No. 109 of 1998, reported in 1999 (1) BLJR 870. In this regard, later a Division Bench of this Court in the case of Kanhai Rai and Ors. v. Sri Dharampal and Ors. reported in 2001 (3) BLJR 103 has held as follows:

To maintain a claim of interim compensation, the negligence/default on the part of the victim is no ground to deny the interim compensation. Once an insurance policy is in force with regard to use of motor vehicle at a public place covering liability against third party risk, then the insurer is also liable to pay the interim compensation even though he is not classified as one of the persons against whom an order can be passed u/s 140. If ultimately it is found at the time of final determination of question of compensation that the insurer is not liable to pay compensation, then an order can be passed for reimbursement of the amount from the owner.

3. Thus, in view of the principle laid down by the Division Bench of this Court, learned Counsel for the appellant has rightly sought permission to withdraw this appeal with the liberty to raise such-objection at the time of final determination and reimbursement in the light of the law laid down in the said Division Bench judgment.

4. The appeal is, thus, permitted to be withdrawn with the liberty aforementioned.

5. The appellant is directed to pay the aforementioned amount to the claimant within two weeks with interest at the rate of 9% per annum from the date of application, which normally is payable as per the law laid down by the apex Court in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, failing which the claimant will be entitled for interest at the rate of 18% per annum from the date of application.

