

(2002) 02 PAT CK 0072

In the Patna High Court

Case No : Misc. Appeal No. 423 of 1999

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Most. Umlesh Devi and Others

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0072

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—Heard learned Counsel for the Appellant and learned Counsel for the Respondents.

2. This appeal is directed against the award of interim compensation u/s 140 of the Motor Vehicles Act, 1988, hereinafter referred to as "the Act. The claim case was filed by the widow of victim Gauri Shankar Prasad Gupta, who was driver of the vehicle which was insured with the Appellant company. According to the stand in the claim case on 22.9.1998 the deceased after loading fertilizer on the Truck proceeded from village Naratnpur Anant to Motihari town and while passing through village Kharik on National Highways No. 28 he was crushed under the wheels of big trailer having 14 wheels of another truck coming from behind. It is alleged that when the deceased was standing asking the Driver of another big trailer as to why he was taking side in rash manner, another trailer crushed the de ceased at about 11.45 P.M.

3. Learned Counsel for the Appellant has, thus, contended hat in absence of any pleading that the vehicle of which the victim was Driver met with an accident in course of which he died, the claim u/s 140 of the Act is not maintainable.

4. Learned Counsel for the Respondents, on the other hand, has submitted that u/s 140 of the Act, where death or permanent disablement of any person has; resulted from an accident arising out of use of a motor vehicle or motor vehicles, owner of the vehicle shall, or, as the case may be, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this

Section. He submitted that the words "arising out of the use" in Section 140 of the Act has been held to be very wide to include even such cases like one. Where the driver was engaged to drive the vehicle which was insured with the Appellant-company and in course of his duty was crushed by other vehicle. In this regard, he placed reliance on the decision of the Division Bench of this Court in the case of National Insurance Company Ltd. Vs. The Presiding Officer, Labour Court and Others, and also on the decision of the Apex Court in the case of S.D. Patil and Anr. v. Smt. Vatschala Uttam More, reported in 1991 (2) T.A.C. 503. Learned Counsel for the claimant-Respondent submitted that in view of the recent Division Bench judgment of this Court in the case of Kanhai Rai and Others Vs. Dharampal and Others the claim for interim compensation cannot be defeated on the grounds as pleaded on behalf of the Appellant at this stage.

5. This Court finds substance in the submission of the learned Counsel for the claimant-Respondent. The Division Bench of Ranchi Bench of this Court, as it then was, in the case of National Insurance Company Ltd. v. The Presiding Officer, Labour Court (supra) has held the Insurance Company liable to pay towards the compensation and interest on it in a case where the Driver of an insured vehicle was murdered while on duty by antisocial elements. The Division Bench has relied upon the decision of the Apex Court in the case of Ved Prakash Garg Vs. Premi Devi and others, where the Apex Court while considering the provisions of Section 147 of the new Motor Vehicles Act, has laid down that the insurance company is liable to pay compensation along with interest under the Compensation Act in the event of death or bodily injury to the workman in the course of his employment. In the case of Kanhai Rai v. Dharampal (supra) the Division Bench has held that at the stage of consideration of an application u/s 140 of the Act, the Tribunal cannot hold a mini enquiry nor can it take into consideration the defence, which is available to the insurer, which has to be considered at the time of final determination of the said question u/s 166 of the Act. It has further been held that if at the stage of Section 140, the insurer is allowed to take defence as provided u/s 149(2), then that will frustrate the very object, for which the provision has been made as it cannot be disposed of expeditiously in terms of the statutory provision and the proceeding will linger and for all purposes will assume the character of determination of a final compensation u/s 166 of the Act.

6. In that view of the matter, this Court does not find any merit in this appeal. The appeal is, thus, dismissed in limine. However, it is made clear that this order shall not in any manner prejudice the defence of the Appellant as is available in law while dealing with the claim u/s 166 of the Act. The statutory amount deposited in this Court may be released in favour of the claimant.