

(1994) 04 PAT CK 0023
In the Patna High Court

Vidya Sagar Singh

APPELLANT

Vs

Shanti Devi and Others

RESPONDENT

Date of Decision : 05-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (1996) 1 ACC 305

Hon'ble Judges : N.P. Singh, J

Bench : Single Bench

Judgement

N.P. Singh, J.—Heard Mr. Udayan Choudhary, the learned Counsel for the petitioner and Mr. D.P. Gupta, Counsel for the Opposite Party/respondent.

2. This revision application is directed against the order dated 4.2.1994 passed by the Claims Tribunal Hajipur, Vaishali, in Claims Case Nos. 34 of 1994, 11 of 1993, u/s 140 of Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act"), whereby he passed order for interim compensation of Rs. 25,000/- to the claimant Opposite Party.

3. The claimant Opposite Party filed an application u/s 166 of the M.V. Act for compensation on account of death of her husband Bachcha Prasad Singh, father of Opposite Party Nos. 2 to 5 in an accident with bus bearing registration No. BRD 7879. The claimants also filed a separate petition u/s 140 of the M.V. Act for interim compensation.

4. Pursuant to the notice, the petitioner, owner of the bus bearing registration No. BRD 7879, appeared and denied the involvement of this bus in the accident. The Claims, Tribunal however, rejected the objection raised by the petitioner and passed order for the payment of interim compensation to the tune of Rs. 25,000/- to the claimant Opposite Party on the basis of the statements of witnesses recorded in the course of investigation of the police case wherein the witnesses stated that the deceased died on account of accident with bus bearing registration No. BRD 7879.

5. An objection was raised on behalf of the Opposite Party about the maintainability of the revision application. Learned Counsel for the Opposite party contended that no revision will lie against the order passed u/s 140 of the M.V. Act, rather appeal will lie. The contention of Mr. Gupta is not well founded.

6. On a plain reading of Section 140 of the M.V. Act it is manifest that the order passed there under is an interim order and not a final award. An appeal lies u/s 173 of the M.V. Act against a final award and not against an order for payment of interim compensation passed u/s 140 of the M.V. Act. The impugned order passed u/s 140 of the M.V. Act being an interim order, is therefore, not appealable, rather it is amenable u/s 115, Civil Procedure Code.

7. As regards payment of interim compensation to the claimants Opposite Party is concerned, learned Counsel for the petitioner contended that the petitioner had denied the involvement of his bus in the accident which resulted in death of the deceased. But the Claims Tribunal passed order for payment of interim compensation without holding enquiry as to which of the buses was involved in the accident. The impugned order is, therefore, bad in law.

8. Reliance was also placed in the case of Oriental Fire and General Insurance Co. Ltd. Vs. Beasa Devi and Others, , wherein it has been held that if the owner of the vehicle denies the involvement of his bus, interim compensation cannot be awarded without a positive finding on the evidence adduced by the parties.

9. In the F.I.R. lodged against the accident, the informant has alleged that the deceased died on account of accident with bus bearing registration No. BHD 7879 whereas the petitioner is owner of bus bearing registration No. BRD 7879.

10. The Claims Tribunal has passed order for payment of interim compensation on the basis of statements of witnesses recorded in the course of investigation of the police case, without holding enquiry as to which of the buses was, in fact, involved in the accident. The impugned order is, therefore, a jurisdiction error and it cannot be sustained.

11. Accordingly, it is set aside and in the result the petition is allowed. The Claims Tribunal is directed to hold an enquiry and pass appropriate orders afresh in accordance with law expeditiously, preferably within three months from the date of receipt/production of copy of this order.