

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.250 of 2015

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Bharat Prasad Burnwal Son of late Raghu Nath Prasad Burnwal, resident of Mohalla- Shastri Colony Jamui, P.O., P.S and Distt.-Jamui.

.... Appellant/s

Versus

1. Babita Devi wife of late Shri Modi
2. Nitu Kumari aged about 11 years (Minor) D/o Late Shri Modi
3. Vikash Kumar aged about 10 years (Minor) S/o Late Shri Modi
4. Nitish Kumar aged about 9 years (Minor) S/o Late Shri Modi
5. Nilam Kumari aged about 5 years (Minor) D/o Late Shri Modi.

Respondent Nos. 2 to 5 are Minor through natural guardian of their Mother namely Babita Devi, all are R/o Tetariay Tanr, Tola, Mushwa Pahari, P.O. Garhi, P.S Khaira, Distt.- Jamui.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sinha

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-11-2015

Heard learned counsel for the appellant.

In the present case, appellant has challenged the interim order dated 21st April 2014 passed in Claim Case No. 4 of 2011 by which the Claim Tribunal has passed the order against the present appellant giving direction to pay the interim amount of Rs. 50,000/-.

The counsel for the appellant submits that the appellant has sold the vehicle in the year 2004 to one Md. Naushad Alam and at the time of accident, he was not owner of the vehicle, but only on account of his name was standing in the owner book, the liability has been fastened against the present

appellant. He further submits that on the day of accident, the vehicle was in possession of Md. Naushad Alam and as such, it is Naushad Alam will be liable to pay the compensation amount. In support of the submission, he has relied on judgment reported in 2015 (2) PLJR 283 (SC) where the Court has held that the person who is in possession of the vehicle, will be liable to pay the compensation amount. As Md. Naushad Alam was never a party before the Claim Tribunal nor before this Court, in absentia, no order can be passed against him and the claimant should not suffer for the act of negligence of the appellant.

This Court is not interfering with the order of the Tribunal. However, liberty is given, the appellant if so advised, may file a proper application to implead Md. Naushad Alam and Insurance Company and bring the suitable facts before the court below. If such application is filed, the Tribunal would hold an enquiry and pass the order in accordance with law.

If the appellant files necessary application within two weeks from today, the court will not go for realization of the amount till the disposal of the application filed by the appellant.

Accordingly this appeal is disposed of.

(Shivaji Pandey, J)

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