

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16779 of 2010

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1. Fatma Khatoon, W/O Late Shafi Ansari
 2. Mumtaz Alam @ Mumtaz Ansari, S/O Late Shafi Ansari
 3. Salauddin Ansari, S/O Late Shafi Ansari
 4. Shamim Ansari, S/O Late Shafi Ansari
 5. Saiyada Khatoon, Minor Daughter of Late Shafi Ansari under the Guardianship of their mother- Fatima Khatoon.

All are resident of Village- Bakhari Bhagwanpur, P.S.- Baruraj, District- Muzaffarpur.

.... Petitioners

Versus

1. Ritesh Kumar Agrawal, Son of Om Prakash Agrawal, resident of House No. B1/586, Sector 13, Gida, Gorakhpur.
2. Divisional Manager, Oriental Insurance Company Ltd., Motijheel, P.S.- Town, Distt.- Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mukesh Prasad Singh, Advocate
For the Respondent/s : Mr. Barun Kr. Choudhary, Advocate
: Smt. C. Sharma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 21-01-2015

Heard learned counsel for the petitioners and the learned counsel appearing for the Insurance Company.

2. The petitioners seek quashing of the order dated 01.05.2010 (Annexure-4) passed by the District Judge-cum-Motor Vehicle Accident Claims Tribunal, Muzaffarpur in Claim Case No. 39 of 2009 declining their prayer to release an amount of Rs.33,000/- out of interim compensation paid to the claimants under Section 140 of the Motor Vehicles Act, 1988 on the ground that there is every chance that the amount of compensation may be frittered away.

3. The petitioners are heirs of late Shafi Ansari, who unfortunately died in road accident caused by vehicle of Ritesh Kumar Agrawal. The vehicle caused the accident admittedly belonged to Ritesh Kumar Agrawal. It is not in dispute that the aforesaid vehicle was ensured with Oriental Insurance Company Ltd.

4. A police case was instituted by Mumtaz Alam, son of the deceased Shafi Ansari, giving rise to Baruraj P.S. case no. 01 of 2009 under Sections 279/304(A) of the Indian Penal Code.

5. A claim case was filed before the Motor Vehicle Accident Claim Tribunal, Muzaffarpur. As the vehicle, which caused accident was insured, the Claim Tribunal directed the Insurance Company to issue a cheque of Rs. 50,000/- in favour of the claimants through account payee cheque. Pursuant to the order dated 06.01.2010, the Insurance company deposited a cheque of Rs 50,000/- on 30.03.2010. On the same day i.e. 30.03.2010, the claimants-petitioners filed a petition for a direction to deposit the said cheque in Account No. 4583 of a local Bank and has prayed that a sum of Rs.33,000/- may be allowed to be withdrawn in order to meet the expenses detailed in the petition.

6. According to the petitioners, they had taken loan for meeting expenses, which are as follows:

(i) Expenses incurred towards Court fees and other



legal:	Rs. 15,000/-
(ii) Expenses incurred in performing the last rite:	
	Rs. 15,000/-
(iii) Expenses incurred for transportation of dead body:	<u>Rs. 3,000/-</u>
Total	Rs. 33,000/-

7. The Claim Tribunal noticed that out of five claimants one of them Sayada Khatoon is a minor daughter, whereas claimant no.1 is the wife, Claimant nos. 2 to 4 are the sons of late Shafi Ansari. The Claim Tribunal in its order observed that full amount of compensation does not reach to the claimants and there is every chance that amount of compensation may be frittered away. In view of the aforesaid circumstances, the Tribunal directed the Branch Manager to fix the share of the minor i.e. Rs.10,000/- in a fixed time scheme and the rest of the amount of Rs.40,000/- will be deposited in the Saving Bank account and the claimants would withdraw only Rs.1,000/- every month.

8. Being aggrieved by the order of the Tribunal, the heirs of late Shafi Ansari has prayed for quashing of order dated 06.01.2010, whereby he has declined to release Rs.33,000/- paid under Sections 140 of the Motor Vehicles Act to meet the expenses, as claimed by the petitioners.

9. A counter affidavit has been filed on behalf of Insurance



Company (respondent no.2), who has justified the order of the learned Tribunal and has supported the order passed by the Tribunal. Learned counsel appearing for the Insurance Company submits that the directions passed by the Tribunal restraining the respondents to withdraw a bulk amount out of compensation of Rs.50,000/- awarded under Section 140 of the Act is in tune with the order passed by the Hon'ble Apex Court in case of **General Manager, Kerala State Road Transport Corporation Truvabdryn Vs. Susamma Thomas (Mrs) & Others**, reported in (1994) 2 SCC 176, and **Jai Prakash Vs. National Insurance Co. Ltd.**, reported in (2010) 2 SCC 607.

10. On the other hand, counsel for the petitioners submits that the guideline laid down by the Hon'ble Apex Court would apply only with respect to final award granted under Section 166 of the M.V. Act and not under Section 140 of the M.V. Act.

11. I have heard the learned counsel for the parties. The guidelines laid down by the Hon'ble Apex Court in the aforesaid case is not confined only to an award of compensation under Section 166 of the M.V. Act but also cover compensation amount under Section 140 of the Act. One of the objects behind the guidelines is to ensure that the amount of compensation received is not frittered away and may cater to the need of the dependants of the deceased over a period of time. However, the Hon'ble Apex Court has not laid down any

absolute restrictions on withdrawal of a part of the amount, if the withdrawal is justified in existing of the situation, which is to tested on merit of each case.

12. The petitioners submit that they have spent about Rs. 33,000/- by taking loan from others in meeting the expenses incurred towards performance of last rites, legal expenses and transportation of dead body. In case, the petitioners succeed in satisfying the Tribunal that they have spent the said amount on taking loan, the learned Tribunal may reconsider its decision to allow just and proper withdrawal, but in no circumstances the amount directed to be put in fixed deposit in the account of the minor should be touched.

13. This Court has not expressed any opinion as to what amount should be allowed by the Tribunal, the same may be considered in accordance with the merit of the case.

14. This application stands disposed of.

(Samarendra Pratap Singh, J.)

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