

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.528 of 2008

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United India Insurance Company Limited through its Patna Regional Office, which is at present situated at 3rd Floor, Chanakya Commercial Complex, R-Block, Patna-1.

(Opposite Party No.-2 in the Claim Case)

.... Appellant

Versus

1. Anita Kumari, Wife of Late Upendra Prasad (Wife of the deceased)
2. Ajit Kumar
3. Sunil Kumar

Both minor sons of Late Upendra Prasad (under the guardianship of their natural mother, namely, Anita Kumari)

4. Priyanka Kumari
5. Joohi Kumari
6. Nisha Kumari

All minor daughters of Late Upendra Prasad (under the guardianship of their natural mother, namely, Anita Kumari)

All residents of Village-Dalhawan, P.S.-Badaur, District-Patna and present Binod Singh, East Lohanipur, Kadam Kuan, District-Patna.

(Claimants in the Claim Case)

.... Respondents – 1st Set

7. Sri Bibhishan Prasad, Son of Karu Prasad, resident of At+Post-Dalhawan, P.S.-Bhadaur Pandarak, District-Patna.

(Owner of the Tractor No. BR-21B-3992)

(Opposite Party No.-1 in the Claim Case)

... Respondents – 2nd Set

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Appearance :

For the Appellant/s : Mr. Rajen Sahay, Advocate

For the Respondent/s : Mr. Mukesh Pd. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA
ORAL ORDER

12 05-01-2015

This file is placed under the heading ***“For Hearing Under Order 41 Rule 11 CPC”***.

1. Heard learned counsels appearing on behalf of the appellant (Insurance) and claimants, respondent nos. 1 to 6. None turned up on behalf of respondent no. 7, the owner.

2. This appeal has been preferred against the judgment and order dated 23rd June, 2008 passed by learned District Judge, Patna, in Claim Case No. 353 of 2007.

3. Since this appeal is confined on limited point, there appears no need to go into further details of the case except the following.

4. Undisputedly, the deceased was driving the vehicle in question owned by his own father, respondent no. 7 (not in appearance) and meet with an accident in the manner detailed in the Fardbeyan and claim application etc.

5. The only point relevant is, as per information goes, that there is no application pending either under Section 163 A or 166 of the Motor Vehicles Act (*hereinafter referred to as the ‘Act’*) at the instance of the claimants, respondent nos.1 to 6, as regard to the accident in question and in spite of taking substantial adjournments, learned counsel appearing on behalf of the claimants, respondent nos. 1 to 6, perhaps is not in a position to be very much sure about the pendency of any other application.

6. It is now undisputed position that the claimants are

entitled for pursuing their claim either under Sections 140 or 163A or 166 of the 'Act' and in the event no independent claim is made under Section 140 of the 'Act' the claimants may prefer the same by way of interim compensation in the proceeding pending under Sections 163A or 166 of the 'Act', but in the event claim made independently under Section 140 of the 'Act' that shall be one and final.

7. In view of the above, in the event no claim application pending at the instance of the claimants, respondent nos. 1 to 6, other than Section 140 of the 'Act' giving rise to present appeal and they by filing affidavit before the Claim Tribunal Below admit this position, the appellant (Insurance) shall pay the amount already awarded in the terms of the award with a right, if sure, to proceed for recovery against the owner, respondent no. 7, but in the event there is any application pending at the instance of the claimants, respondent nos. 1 to 6, either under Sections 163 A or 166 of the 'Act', the appellant (Insurance) shall not be liable to satisfy the impugned award rather that will be merged there and subject to the final order of the present proceeding, if any.

8. With the above observations, this appeal stands disposed of.

9. Let the statutory deposit be transmitted to the Tribunal Below for further needful.

(Akhilesh Chandra, J)

Praveen-II/-

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