

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.944 of 2011**

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1. Bina Devi W/O Vijay Kumar Sah R/O Village - Sadar Bazar Jamalpur, Tiptop  
Gali, P.O. & P.S. Jamalpur, District - Munger

Opposite Party in court below/ Appellant/s

Versus

1. Mala Prasad W/O Brajendra Prasad R/O Mohalla - Lallupakhar, Argana, P.S.  
Kasim Bazar, District - Munger

Claimant in the court below/ Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Nawal Kishore Singh, Adv.

For the Respondent/s : .....

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 13-05-2015**

Heard Mr. Nawal Kishore Singh, learned counsel for the  
petitioner. There is no representation on behalf of the respondents.

**Re: I.A.No.1371 of 2011**

This interlocutory application has been filed for substitution of  
respondent No.1 who has deceased during the pendency of the appeal  
on 31.4.2014.

According to the petitioner he has only information regarding  
respondent No.2 as his heir and legal representative.

Since the respondent No.1 appeared through counsel hence he  
was directed to inform regarding the legal heirs of the deceased  
respondent No.1 but which information has not come on record and it

is taking note of such circumstance that this Court vide order passed on 8.4.2015 directed the consideration of the interlocutory application at the stage of final disposal of the appeal.

I have heard learned counsel petitioner.

The prayer is allowed, let the name of the respondent no.1, Brajendra Prasad be expunged from the memo of appeal.

The interlocutory application is allowed.

**Re:-C.W.J.C. No. 944 of 2011**

This appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') has been filed to question the order dated 6.10.2009 passed by the Motor Vehicle Accident Claim Tribunal-cum-District Judge, Munger in Claim Case No. 20 of 2008 whereby the court below has been pleased to award an interim compensation of Rs. 25,000/- in exercise of powers vested under Section 140 of 'the Act'. The order has been passed with stipulation that if the same has not paid within one month it would carry an interest of 9% per annum. The appeal is accompanied with a petition for condonation of delay bearing I.A. No. 3394 of 2012. There is a delay of 1 year 10 months and 22 days in filing the appeal.

It is the case of the petitioner that initially he had filed a criminal miscellaneous application to question the order bearing Cr. Misc. No. 14421 of 2009 and which was converted into a criminal



writ petition bearing Cr.W.J.C.No.100 of 2010. It is submitted that said criminal writ petition was dismissed as withdrawn by order passed on 6.12.2010 present at Annexure-1 to the condonation application seeking liberty to invoke the proper forum. It is submitted that thereafter that the appeal was filed and which has resulted in a delay of 1 year 10 months and 22 days. It is stated that the petitioner is a parda nashin lady and although she had knocked the doors of the court at the appropriate time but the forum was not as per law and hence the delay.

I have heard learned counsel for the petitioner and in absence of any contest the delay is condoned.

Adverting to the merits of the case the order has been passed under Section 140 of 'the Act' whereby an ad interim compensation of Rs. 25,000/- has been awarded.

Section 140 of 'the Act' provides for payment of interim compensation pending final adjudication of the claim and Sub Section 2 thereof provides that an amount of Rs. 50,000/- would be payable upon the death of the any person and Rs. 25,000/- would be payable in case of permanent disablement of the person concerned. The award under Section 140 is to be passed as an interim measure pending final adjudication of the claim.

Section 142 of the Act defines permanent disablement to read

as follows:

**“142. Permanent disablement.-** For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-

- (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
- (b) destruction or permanent impairing of the powers of any member or joint; or
- (c) permanent disfiguration of the head or face.”

Although the law on payment of an interim compensation under Section 140 of ‘the Act’ is well settled and the claim is not to be examined in deep detail but nonetheless a prima facie case for such claim is to be made out.

Learned Tribunal while making the award vide judgment and order impugned being well aware of the legal position has relied upon a disablement certificate issued by the Sadar Hospital led as Ext. 7A to the claim case.

Under orders of this Court the lower court records have been produced and Ext.1A is the injury report of the injured applicant. The accident is stated to have taken place on 25.3.2007 and the injury report at Ext.1A is of the same day issued by the Medical Officer, Primary Health Centre, Jamalpur and reports as lacerated wound skin deep. There is no reference to any disablement suffered by the

claimant. A similar report is also given in respect of the wife of the claimant. This relevant piece of exhibit does not find discussed in the order impugned rather the court below apparently has relied upon the certification by the Sadar Hospital present at Ext 7 and which though reports 'a nerve injury leading to some muscular deactivation to the extent of 50%' but whether this would constitute a permanent disablement is itself an issue which requires an adjudication.

In my opinion, in such circumstances where there is a cloud regarding any permanent disability suffered by the claimant, there was no occasion for the Tribunal to award any interim compensation.

The matter is yet pending before the Tribunal and thus my opinion hereinabove may not be construed as an opinion on the relative merits of the claim which requires adjudication on its own merits. My opinion is only on the issue that the circumstances did not warrant an award of interim compensation in view of the two divergent injury reports.

In the circumstances, the judgment and award dated dated 6.10.2009 passed by the Motor Vehicle Accident Claim Tribunal-cum-District Judge, Munger in Claim Case No. 20 of 2008 under Section 140 of the Act, cannot be upheld and is set aside. The matter is remanded to the Tribunal for its adjudication and disposal on merits in accordance with law.

As I have observed, the opinion expressed by this Court is limited to the issue of interim compensation without expressing any opinion regarding the merit of the claim so raised by the claimant which requires adjudication and disposal on its own merits.

The appeal is allowed.

Let the lower court records be returned to the court below in a sealed cover forthwith.

**(Jyoti Saran, J)**

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