

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.737 of 2011

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The New India Assurance Company Ltd., Siliguri Branch, through Divisional Manager, West of Gandhi Maidan, Near Biscoman Bhawan, Patna.

Appeal and Appellant through the Deputy Manager and duly constituted Attorney, the New India Assurance Co., Ltd., Regional Office, BSFC Building, 6th Floor, Fraser Road, Patna.

.... Appellant/s

Versus

1. Mina Devi, wife of late Prabhu Prasad Srivastava @ Prabhu
2. Rajesh Kumar, son of Late Prabhu Prasad Srivastava @ Prabhu
3. Nitish Kumar, son of Late Prabhu Prasad Srivastava @ Prabhu
4. Sonu Kumar, son of Late Prabhu Prasad Srivastava @ Prabhu
5. Priti Kumari, daughter of Late Prabhu Prasad Srivastava @ Prabhu
6. Sonu Kumar, son of Late Prabhu Prasad Srivastava @ Prabhu

(respondents no.2-6 are minors under the natural guardian mother, Res.1)

all the above are resident of Mohalla –Chhatauni Sport Club Chhatauni, P.S.-Chhatauni, District-East Champaran.

..... claimants....respondents

7. M/s Amar Jyoti Travels, at Mohalla- Imlichatti, P.S.-Town, Muzaffarpur (owner)

... opposite party no.1/respondent

8. Vijay Singh, son of late Gudar Singh, resident of at/P.S.-Sugauli, Dist.-East Champaran (driver).

..... opposite party no.3/respondent.....

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Appearance :

For the Appellant/s : Mr. Durgesh Kumar Singh, Advocate

For the Respondent/s : Mr. Sunil Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 13-02-2015

Heard learned counsel for the appellant, learned counsel for the claimants and learned counsel for the driver.

2. This is an Appeal preferred against order dated

15.07.2011 passed by the District Judge-cum-MACT, Patna in Claim Case No. 572 of 2009.

3. It is undisputed position that soon after filing of the claim case matter was initially referred to Lok Adalat where some orders were passed even without appearance of named opposite parties, the insurer against whom the liabilities was fixed challenged the order but could not succeed giving rise to the present appeal. This is also undisputed that subsequent to the claim case the claimant respondent has already preferred a claim case under Section 166 of the Motor Vehicles Act, 1988.

4. Taking into consideration the decision of this Court rendered in the case of *Veena Devi and Ors. V. Ram Nandan Prasad and Ors.* reported in 2013(2) PLJR 123, the claimants respondents without entering into subsequent debate offers to get the order impugned inoperative with a liberty to file application under section 140 of the Motor Vehicles Act, 1988 seeking *ad interim* compensation in on going claim case before the court below.

5. In view of the above, order impugned dated 15.07.2011 passed by the District Judge-cum-MACT, Patna in Claim Case No. 572 of 2009 is set aside.

6. Accordingly, the Appeal is hereby allowed and, simultaneously, the Court in seisin of on going Claim Case is

directed to do all the needful at the earliest so that the prayer made under Section 140 of the Motor Vehicles Act, 1988 be not only decide immediately but also the entire claim be decide at the earliest.

7. Learned counsel for the appellant consists to the submission made above.

8. Let statutory amount be remitted to the Court below for further needful.

(Akhilesh Chandra, J)

Ashwini/-

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