

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.787 of 2013

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1. Manju Devi Wife Of Uma Shankar Shukla, (Claimant No.1) Resident Of Village-Chaparia Tola, Ram Purwa, P.S.-Mainatand, District-West Champaran

2. Manju Shukla Wife Of Late Dilip Kumar Shukla, (Claimant No.2) Resident Of Village-Chaparia Tola, Ram Purwa, P.S.-Mainatand, District-West Champaran

3. Aditya Shukla @ Dibyansu Shukla Son Of Late Dilip Kumar Shukla Represented Through His Mother Manju Shukla, (Claimant No.3) Resident Of Village-Chaparia Tola, Ram Purwa, P.S.-Mainatand, District-West Champaran

.....Claimants / Appellants

Versus

1. Jamil Ahmad @ Jamil Ansari (Driver) Son Of Abbash Ansari Resident Of Village-Ghorpakari, P.S.-Inarwa, District-West Champaran

2. Sudhir Kumar Tiwary Son Of Shri Prem Chandra Tiwari (Owner) Resident Of Village-Ghorpakari, P.S.-Inarwa, District-West Champaran

..... Opposite Parties / Respondents

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Appearance :

For the Appellant/s : Mr. Umesh Chandra Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

6 20-07-2016 The instant appeal is directed against the order dated 25.09.2013 passed by the learned 3rd Additional District & Sessions Judge, West Champaran (hereinafter referred to as the Tribunal) in Motor Vehicle Claim Case No. 26 of 2011 whereby the appellants were not allowed the relief under Section 140 of Motor Vehicles Act (herein after referred to as the Act) and accordingly, their application was rejected on the ground that the owner of the vehicle has denied that his tractor was involved in that accident. The learned court below has relied upon the decision of this Court passed in the matter of **Rajan Kumar Pandey vs.**

Md. Mumtaz Miyan reported in **2001 (3) PLJR page 66.**

On behalf of the appellants it has been submitted that the facts of the present case is quite on differing footing. Here there is sufficient material on the record to show that the accident was caused by tractor bearing registration no. BR22E-5832 which was being driven by the driver rashly and negligently. The owner of the said tractor is respondent no. 2 and the driver is respondent no. 1. It has been submitted that on the record there is first information report bearing Chanpatiya P.S. Case No. 211 of 2010 and further after completing investigation chargesheet has also been submitted showing the involvement of the said tractor in the accident causing death of Dilip Kumar Shukla. It is also submitted that ruling relied upon by the learned court below has not been correctly appreciated. It has been held therein that when an accident is denied, no interim relief can ever be granted without any evidence/material proving the alleged accident by the owner of the concerned vehicle. Here, from first information report itself prima facie it reveals that the alleged accident was caused by the tractor of respondent no. 2 which was being driven by respondent no. 1. Learned counsel for the appellant has further stated that in the matter of **Surya Jyoti Devi and ors. v. Krishna Kumar Singh & Ors.** reported in **1997 (1) PLJR page 912** the Hon'ble court has



been pleased to hold that Section 140 of the Act is a summary proceeding where such plea cannot be raised and accordingly, it was held that the appellants are entitled for interim compensation of Rs. 50,000/- with interest within four weeks. The Hon'ble Court in that case has relied upon a decision of Hon'ble apex Court reported in **(1991) 3 SCC 530- (Shivaji Dayanu Patil vs. Vatschala Uttam More)** and also the judgment of Hon'ble Supreme Court reported in **(1996) 2 SCC 736** in the matter of **K. Madankumar vs. Managing Director, Thanthal Pariyar Transport Corporation** and this earlier judgment of this Court was not placed at the time of hearing in the matter of **Rajan Kumar Pandey** (supra).

On behalf of respondents the learned counsel does not dispute regarding the submission of chargesheet in this case against the driver of the tractor but contends that the injured has not been examined during investigation and on the basis of statement of injured, Chaukidar has lodged the first information report. It is further submitted that the tractor of respondent no. 2 was not involved in the said accident and it was the fault of the driver of the motorcycle itself.

In my opinion, the denial of the owner regarding the involvement of his tractor in the accident is the matter which

ought to be considered at the time of final adjudication and not at the time of deciding the interim compensation. There appears to be prima facie material about involvement of the tractor in the accident. The Tribunal has erred in coming to the conclusion without evidence adduced on behalf of the owner that the said tractor was not involved in the accident. For disposing of the application under Section 140 of the Act, the Tribunal is not required to hold regular trial in the same manner as for adjudicating a claim petition under Section 166 of the Act.

Accordingly, this appeal is allowed and the order dated 25.09.2013 passed by the learned Tribunal is hereby set aside. The respondent no. 2 is directed to deposit the amount of interim compensation of Rs. 50,000/- within six weeks which the claimants are entitled to withdraw on furnishing of proper security to the satisfaction of the learned Tribunal.

In peculiar facts and circumstances of the case, I direct the Tribunal to dispose of the claim case within four months from the date of production of a copy of this order. The parties are directed to appear before the learned Claim Tribunal with their witnesses with a copy of this order on or before 2nd August, 2016. However, there shall be no order as to costs.

(Jitendra Mohan Sharma, J)

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