

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.319 of 2013

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1. The Divisional Manager, National Insurance Co. Ltd., Gaya, Represented Through The Chief Regional Manager And The Constituted Attorney, Regional Office, National Insurance Company Ltd., 4th Floor, Sone Bhawan, B.C. Patel Marg, Patna-1.

.... Appellant/s

Versus

1. Sanju Devi W/O Late Mishilesh Sharma Resident Of Village- Koili, P.S- Makhdumpur, Distt- Jehanabad.
2. Rakhi Kumari D/O Late Mithilesh Sharma, Represented Through Their Legal And Natural Guardian I. E. Mother Sanju Devi Resident Of Village- Koili, P.S- Makhdumpur, Distt- Jehanabad.
3. Rakesh Kumar S/O Late Mithilesh Sharma, Represented Through Their Legal And Natural Guardian I. E. Mother Sanju Devi Resident Of Village- Koili, P.S- Makhdumpur, Distt- Jehanabad.
4. Pinki Kumari D/O Late Mithilesh Sharma, Represented Through Their Legal And Natural Guardian I. E. Mother Sanju Devi Resident Of Village- Koili, P.S- Makhdumpur, Distt- Jehanabad.
5. Neha Kumari D/O Late Mithilesh Sharma, Represented Through Their Legal And Natural Guardian I. E. Mother Sanju Devi Resident Of Village- Koili, P.S- Makhdumpur, Distt- Jehanabad.
6. Sourav Kumar Ranjan S/O Ram Niwas Singh Resident Of Village- Chatar, P.O- Pai Bigha, P.S- Makhdumpur, Distt- Jehanabad.
7. Dharmendra Kumar S/O Rajendra Sharma Resident Of Village- Ankopur, P.S- Makhdumpur, Distt- Jehanabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Kumar Singh Vikram, Advocate
For the Respondent n0.2 : Mr. Paras Nath, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

2 20-05-2016 With the consent of the respective parties, the matter is being finally decided at the state of admission itself.

2. Interlocutory Application No. 3163/2013 has been filed to condone the delay in filing of instant appeal. On the grounds so enumerated therein, the delay is condoned.

3. As such, Interlocutory Application No. 3163/2013

stands allowed.

4. The instant appeal has been brought up at the behest of National Insurance Company Limited against an order dated 22.11.2012 passed by Adhoc Additional District Judge-2nd cum-Motor Vehicle Accidents Claims Tribunal, Jehanabad in Claim Case No. 39/2009 whereby and whereunder the learned Tribunal had allowed the prayer of the claimant under Section 140 of the Motor Vehicles Act (in short 'the Act') directing the Insurance Company to pay Rs. 50,000/-.

5. Bereft of unnecessary details, it is evident that dependants of Mithilesh Sharma (deceased) have filed claim petition under Section 140 of the Act on account of death of Mithilesh Sharma in a motor vehicle accident while he was travelling over city ride bus bearing registration no. BR-25-9018 and for that Kurtha PS Case No. 70/2009 was registered. It has further been disclosed that at the time of accident, vehicle was insured under National Insurance Company Limited and accordingly, impleaded the owner, driver as well as Insurance Company as Opposite Parties.

6. Owner as well as driver of the vehicle appeared and filed their WS wherein, they have stated that the driver possessed valid license during course of driving the vehicle at the



time of alleged accident. It has also been disclosed that the deceased was in an inebriated condition whereunder he went over roof of the vehicle and so, the occurrence took place on account of his own fault, negligence for which none is responsible. Moreover, it has also been pleaded that vehicle at the relevant time was insured under National Insurance Company Limited. So questioned maintainability of claim petition under the garb of own negligence

7. In likewise manner, the Insurance Company after appearance filed WS and objected over maintainability of the petition under Section 140 of the Act. Furthermore, it has also been pleaded at the end of Insurance Company that protection in terms of Section 147, 149 (2) of the Act is found available whereupon the death of the deceased being the resultant on account of own lapse of the deceased, deprives the claimants to ask for a claim under Section 140 of the Act. Furthermore, it has also been pleaded that from the FIR it is evident that deceased was travelling over the roof of the vehicle during course of which met with an accident by having dashed against the branch of Peepal tree during midst of journey and so, claimants are not at all entitled for any kind of compensation including that of under Section 140 of the Act. It has also been pleaded that as per terms

of policy, the Company had not carried obligation to indemnify the owner for breach of agreement, as allowing passengers to travel over roof was not under terms of agreement as well as happens to be non permissible in the eye of law. So, even if claim is allowed, for that owner should be held liable and not the insurance company when interest is found duly protected in terms of Section 149(2) of the Act.

8. Furthermore, it has been pleaded that independent petition under Section 140 of the Act is not at all permissible.

9. From perusal of the Act it is evident that Chapter-X has got independent identity which begins with Section 140 of the M.V. Act. A conjoint petition purported to be under Section 166 of the Act is necessary or not, for the purpose of maintainability of petition under Section 140 of the Act, for that Sub-Section 1 of Section 140 of the Act be taken note of. For better appreciation, the same is quoted below:-

“140. *Liability to pay compensation in certain cases on the principle of no-fault.*—(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

10. From bare perusal of the relevant provision, it is apparent that it is not at all inscribed with any kind of condition nor specify that its identity is recognizable only after having presence of main petition to be under Section 166 of the Act.

11. In the case of *M/s. Oriental Insurance Co. Ltd v. Sarju Ram* reported in *AIR 2001 Patna 47*, after dealing with the earlier judicial pronouncement having on that very score, it has been held under para-19 which is as follows:-

“19. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove, I am, therefore, of the definite opinion that Chapter X of the Act is an independent provision and the Tribunal is bound to decide the claim application filed under Section 140 of the Act for grant of interim compensation notwithstanding the claimant having filed any other application under Section 166 or under any other provisions of the Act. I am further of the opinion that the provision of Chapter X has overriding effect over any other provision of the Act and the Legislatures have made it clear under Section 144 of the said Act.”

12. Thus, it is abundantly clear that neither Section 140(1) of the Act lays down any barrier as condition precedent for its applicability nor it could be perceived like so. That being so the settled legal proposition whereupon independent identity of Section 140 of the Act is not at all found to be influenced by any other activities, which the claimant, if so desires, intend to

perform, that means to say, filing of regular claim petition under Section 166 of the Act, though is found barricaded with a condition that applicant is under obligation to either adopt application of Section 140 or Section 163 (A), but not under both heads.

13. In the case of *Eshwarappa @Maheshwarappa v. C.S. Gurushanthappa reported in (2010)8 SCC 620*, again the issue has come up and in para-15, it has been held which is as follows:-

15. Sub-section (1) of section 141 makes the compensation under section 140 independent of any claim of compensation based on the principle of fault under any other provision of the Motor Vehicles Act or under any other law but subject to any claim of compensation under section 163A of the Act. Sub-sections (2) and (3) further provide that even while claiming compensation under the principle of fault (under section 166) one may claim no fault compensation under section 140 and in that case the claim of no fault compensation shall be disposed of in the first place and the amount of compensation paid under section 140 would be later adjusted if the amount payable as compensation on the principle of fault is higher than it.

14. Now the another question for adjudication as has been raised on behalf of appellant is, as there happens to be own negligence on the part of the deceased by having his presence over roof of the bus as is coming out from First Information Report

though had not pleaded and on account thereof, met with an accident by dashing against branch of a tree. For that Sub Section 4 of Section 140 of the M.V. Act is to be looked into. For better appreciation Sub Section 4 of Section 140 of the Act is quoted below:-

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

15. The aforesaid mandate of law has been perceived by the Hon'ble Apex Court in *Eshwarappa @Maheshwarappa v. C.S. Gurushanthappa (supra)* whereunder at para-13, it has been incorporated as follows:-

13. Sub-section (4) conversely provides that the motor accident resulting in the death or permanent disablement might be entirely due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim is made but that too would have no effect either on the right to receive the compensation or the amount of compensation. Sub-section (5) which begins with a non obstante clause makes it further clear that the liability under section 140 is independent of the liability of the owner of the vehicle to pay compensation under any other law for the time being in force. The proviso to sub-section (5), of course, provides that the amount of compensation under any other law would be reduced from the amount of compensation payable under section 140 or under section 163A of the Act.

16. That being so, the plea of the appellant that the deceased was the victim of his own negligence and on account thereof, the claimants were not entitled to seek relief for interim maintenance under Section 140 of the Act is found duly repelled.

17. Consequent thereupon, the instant petition is found devoid of merit and is, accordingly, rejected.

(Aditya Kumar Trivedi, J)

Patna High Court
20th day of May 2016.
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