

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.492 of 2010

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Arvind Kumar Singh @ Arvind Singh & ors

.... Appellant/s

Versus

Sri Krishan Kumar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shambhu Sharan Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

07 20.07.2017

Heard learned counsel for the appellants. No one appeared on behalf of respondents.

The order dated 22.7.2011 goes to show that notice issued to respondent was returned with endorsement that respondent refused to accept the notice and accordingly, the aforesaid service was treated as valid service.

Perused the lower court record.

The present appeal has been preferred against the order dated 08.03.2010 (wrongly mentioned in para 1 of memo of appeal as judgment) passed by Motor Accident Claim Tribunal, Vaishali in Claim case no. 31/2009 by which and wehereunder Claim Tribunal refused to grant interim relief to the claimants under section 140 of the Motor Vehicles Act, 1988 (in short "the Act") on the ground that appellants failed to prove that jeep was being driven rashly and negligently by the driver and also some other grounds.

The fact of the case is that a motor accident took place on 9.2.2009 and in the said incident wife of appellant no.1 died on the



spot and Mahua P.S. case no. 40/2009 under sections 279, 338 and 304A of the Indian Penal Code was registered against driver of the jeep bearing registration no.BR IP 8898.

On 6.4.2009 appellants filed a petition under section 140 of the Act claiming interim relief of Rs. 50,000/-. On the basis of the aforesaid petition, Claim case no. 31/2009 was registered and learned Claim Tribunal, Vaishali rejected the aforesaid claim petition on the ground as mentioned.

Learned counsel appearing for the appellants submits that interim relief under section 140 of the Act is granted on theory of no fault and to get interim relief, it is not necessary for the claimant to plead and prove that the death was caused due to wrongful and negligent act of the driver and the owner of the vehicle but learned Tribunal, ignoring the aforesaid law, passed the impugned order which is liable to be set aside.

Having heard the aforesaid contentions of learned counsel appearing for the appellants and having perused the lower court record, I find that a petition was filed under section 140 of the Act which was registered as Claim case no. 31/2009. The claimants adduced evidence before the Tribunal but the petition was rejected on the grounds as earlier mentioned in this order. However, it would appear that the Tribunal failed to take note of sub-section (3) of section 140 of the Act because the aforesaid sub-section (3) of section 140 of the Act does not cast any burden upon the claimants to plead and prove the wrongful act, negligence or default of the owner of the vehicle. Therefore, in my view, the Tribunal committed error in



rejecting the claim of interim relief of the claimants.

Therefore, in the aforesaid circumstances, this appeal stands disposed of setting aside the impugned order dated 08.03.2010 passed by Motor Accident Claim Tribunal, Vaishali in Claim case no. 31/2009 and the respondent is directed to pay Rs. 50,000/- (Fifty thousand) together with interest at the rate of 6% per annum from the date of filing the claim case till the date of realization to the claimants by way of interim relief as provided under section 140 of the Motor Vehicles Act.

Let the lower court record be returned.

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(Hemant Kumar Srivastava, J)

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