

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.420 of 2021**

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Balram Jha Son of Bishwanath Jha Resident of Village-Tamuria P.S.
Lakhnour District-Madhubani.

... .. Petitioner

Versus

1. Sudhira Devi Wife of Badri Jha Resident of At, P.O. and P.S. Ghoghaddiha District-Madhubani.
2. Badri Jha Son of Late Janardan Jha Resident of At, P.O. and P.S. Ghoghaddiha District-Madhubani.
3. Hira Nand Jha @ Hinu Jha Son of Late Satto Jha At, P.O. and P.S. Ghoghaddiha District-Madhubani.
4. Reliance General Insurance Company Himalya House 8th Floor 38B J.L. Nehru Road Park Stree Kolkatta 700071

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Shailendra Kumar
For the Respondent/s : Mr.Ashok Kumar Prasad

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

3 25-04-2022 Learned counsel for the petitioner is directed to remove
all the defects pointed out by the Stamp Reporter within one month.

Heard learned counsel for the petitioner as well as learned
counsel for the respondents.

It is an admitted fact that son of the respondent Sudhira
Devi died in an accident arising out of use of motor vehicle on
25.09.2009. In the year 2010, Claim Case No. 05 of 2010 was filed
by the respondent for compensation under Section 140 of the Motor
Vehicle Act, 1988, hereinafter referred to as 'the Act'. At that time,
no case under Section 163 (A)/166 of 'the Act' was filed
independently.



The above-mentioned case independently filed under Section 140 of 'the Act' was finally disposed of in the year 2010 itself and Rs. 50,000/- was awarded to the claimant which was already paid by the Insurance Company to the claimant. Later on, in the year 2014, again a claim petition was filed as Claim Case No. 100 of 2014 under Section 166 of 'the Act'. During the pendency of that case, an application was filed by the petitioner that when earlier the Claim Case No. 05 of 2010 independently filed under Section 140 of 'the Act' was finally disposed of, subsequent petition under Section 166 of 'the Act' is not maintainable. In support of his submission, the petitioner filed a decision of this Court, reported in 2013 (2) PLJR 123. This court in the above-mentioned decision has been pleased to hold that when the claimant chose to come forward under Section 140 of 'the Act' independently not as a composite application, they are debarred from proceeding under section 163 (A) of 'the Act' for the structural compensation on the principle of no fault but also under Section 166 of 'the Act'.

Learned counsel for the respondent by citing a decision in LPA No. 1070 of 2001, reported in 2001 (4) PLJR 557, has submitted that without filing a case under Section 166 of 'the Act', a case under Section 140 of 'the Act' may be filed independently.

It is not in dispute whether a petition under Section 140 of 'the Act' may be filed independently or not. It is undisputed that a petition under section 140 of 'the Act' can certainly be filed



independently. In the instant case, it was filed and finally decided. The question remains to be adjudicated upon, whether subsequent case under Section 166 of 'the Act' is maintainable or not when already a petition under Section 140 of 'the Act' has been filed. It has categorically been decided in the case, reported in 2013 (2) PLJR 123 (supra), that if a petition has already been filed independently under Section 140 of 'the Act' and it is decided, no subsequent petition under Section 166 of 'the Act' may be filed.

Vide impugned order, the learned court below has made permissible of filing of the above-mentioned petition under section 166 of 'the Act' which is contrary to the law laid down by this court in the above-mentioned decision.

In view of aforesaid, the impugned order is set aside and this civil miscellaneous petition is allowed.

Office shall ensure that all defects are removed by the petitioner within the stipulated time provided in para-1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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