

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 316 of 2024

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Suresh Sah Son of Late Badelal Sah, Resident of Village- Ward No. 8, Baniyapatti, Jagdishpur, Post- Jagdishpur, Police Station- Nautan (Jagdishpur), District- West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Transport, Government of Bihar, Patna.
2. The Secretary, Department of Transport, Government of Bihar, Patna.
3. The State Transport Commissioner, Government of Bihar, Patna.
4. The District Magistrate, West Champaran, Bettiah.
5. The District Transport Officer, West Champaran, Bettiah.
6. The Sub-Divisional Officer, West Champaran, Bettiah.
7. The Station House Officer, Jagdishpur, District- West Champaran, Bettiah.

... ... Respondent/s

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*Motor Vehicle Act, 1988---section 161---Motor Vehicles Rules, 1992--- Rule 225(A) to 225(F), 226 to 247---Bihar Motor Vehicle (Amendment-1) Rules, 2021--- Bihar Motor Vehicle Accident Claim Tribunal (Establishment and Service Condition) Rules, 2023---Ex gratia compensation in Hit and run cases---- son of the petitioner died in a road accident, which took place on 21.03.2022 on account of rash driving of an unknown truck--- a sum of Rs. 25,000/- was paid to the petitioner by way of ex gratia amount, as per the provisions contained in the Solatium Scheme, 1989---contention on behalf of Petitioner that by virtue of the notification dated 11.08.2021, issued by the Transport Department, Government of Bihar, Patna to be effective from 15.09.2021, petitioner is entitled to payment of a sum of Rs.5 lakh by way of ex gratia amount on account of death of his son in a hit and run case---Respondent countered by submitting that as per the Solatium Scheme, 1989, the petitioner is entitled to only a*

*sum of Rs.25,000 but failed to dispute that the notification dated 11.08.2021, issued by the Transport Department, Government of Bihar, Patna, postulating payment of a sum of Rs.5 lakh by way of ex gratia amount in case of death in a hit and run case, was in existence as on 21.03.2022, i.e. the date of death of the son of the petitioner---*  
*Held: though the notification dated 11.08.2021 has been repealed by a subsequent notification dated 20.10.2023, however, with effect from 26.10.2023, hence undeniably during the intervening period, the notification dated 11.08.2021 was legally valid, enforceable, applicable and binding upon the respondents, thus the petitioner is entitled to be paid a sum of Rs. 5 lakhs, by way of ex gratia amount---*  
*District Magistrate directed to pay the balance amount of Rs. 4,75,000/- to the petitioner, within a period of eight weeks---writ allowed. (Para 1, 6-9)*

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- 6. The Sub-Divisional Officer, West Champaran, Bettiah.
- 7. The Station House Officer, Jagdishpur, District- West Champaran, Bettiah.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Manoj Kumar, Advocate  
Ms. Lakshmana, Advocate  
For the State : Mr. Birju Prasad (GP-13)  
Mrs. Shweta Anand, AC to GP-13

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH  
ORAL JUDGMENT

Date: 25-07-2024

The present case is a calamitous case, wherein the son of the petitioner died in a road accident, which took place on 21.03.2022, at about 10:15 P.M., on account of rash driving of an unknown truck near Hiro Honda Agency, Jagdishpur, leading to registration of Nautan (Jagdishpur) Police Station Case



No.158 of 2022, dated 22.03.2022, registered under Sections 279 and 304(a) of the Indian Penal Code, against unknown.

2. Though it is not disputed by the respondents that the son of the petitioner died on account of being hit by an unknown truck, resulting in the present case being a hit and run case, nonetheless, various internal communications were exchanged in between the governmental authorities, with regard to payment of ex gratia/ compensation amount to the petitioner on account of the death of his son due to the aforesaid unfortunate road accident. Nonetheless, the District Transport Officer, West Champaran at Bettiah, by a letter dated 05.04.2023, had written to the District Public Grievance Redressal Officer, West Champaran at Bettiah that as per the notification dated 18.08.2021 of the Transport Department, a sum of Rs.5 lakh is payable to the petitioner by way of ex gratia amount, however, the said amount was not paid to the petitioner and ultimately a petty sum of Rs. 25,000/- was paid to the petitioner, as per the provisions contained in the Solatium Scheme, 1989. It is also pointed out that the Sub-divisional Officer, Bettiah Sadar, vide letter dated 03.02.2024, had recommended for payment of a sum of Rs.2 lakh, but the same was also not paid.

3. The learned counsel for the petitioner has referred to a



gazette notification dated 11.08.2021, issued by the Transport Department, Government of Bihar, Patna titled as “Bihar Motor Vehicle (Amendment-1) Rules, 2021”, to be effective from 15.09.2021, wherein Section 225F of the Motor Vehicles Rules, 1992 has been amended in the following manner:-

***“225F-Hit and Run Cases: -***

*(1) In the cases of hit and run vehicle accidents, the Accident Claim Inquiry Officer- cum-Sub-Divisional Officer will make recommendation after inquiry regarding payment of the compensation to the dependent of the deceased or grievously hurt person, in the light of Motor Vehicle Act. The Accident Claim Assessment Officer-cum-District Magistrate shall immediately approve the payment of the interim compensation amount from the Bihar Vehicle Accident Assistance Fund. (The Claim Assessment Officer-cum-District Magistrate shall be dealt as 'Claim Assessment Commissioner' as per the Solatium scheme, defined under the rules).*

*(2) After the approval made by the District Magistrate, the District Transport Officer shall make payment of the interim compensation of Rs 5 lakh (five lakh) to the dependent of the deceased in the event of death and Rs fifty thousand to the grievous hurt person from the 'Bihar Vehicle Accident Assistance Fund' and approval order for this scheme shall be communicated to the authorized Lead Insurer so that there imbursement of the payable amount is made in the Bihar Vehicle Accident Assistance*



*Fund, at the level of the Lead Insurer.*

*(3) Out of the amount of interim compensation paid, as per solatium scheme/updated scheme announced by the Government of India, it shall be deposited in the bank account of the concerned Accident Claim Assessment Officer-cum-District Magistrate related with Bihar Vehicle Accident Assistance Fund by the authorized Insurance Company (Lead Insurer) as per the General Insurance Council. The balance amount of interim compensation payment shall be deemed to have been spent from Bihar Vehicle Accident Assistance Fund.”*

4. The learned counsel for the petitioner has pointed out that though the aforesaid notification dated 11.08.2021, published in the Bihar gazette on 11.08.2021(Hindi version)/15.02.2022 (English version), was stayed by the learned Division Bench of this Court, by an order dated 21.12.2022, passed in CWJC No.2183 of 2022 (Sandeep Raj vs. the State of Bihar & Ors.) and other analogous cases, nonetheless, the said batch of writ petitions were disposed of by the learned Division Bench of this Court, by an order dated 28.11.2023, with the following observations:-

*“3. We make it clear that we have not made any observation on the merits of the challenge made in the writ petitions nor the rules now framed by the Government.*



*4. It is made clear that if any compensation remains to be paid, which payment was interdicted only by virtue of the pendency of the instant writ petitions and the interim order passed therein, the same would be paid as expeditiously as possible by the District Magistrates to the victims of the accident or their dependents."*

5. The learned counsel for the petitioner has next referred to the notification dated 20.10.2023, published in the Bihar gazette on 26.10.2023, to be effective from 26.10.2023, which is titled as "Bihar Motor Vehicle Accident Claim Tribunal (Establishment and Service Condition) Rules, 2023" whereby and whereunder the aforesaid amendments made in Rule 225(A) to 225(F) and Rule 226 to Rule 247, by the aforesaid Bihar Motor Vehicle (Amendment-1) Rules, 2021 have been repealed, relevant clauses whereof are reproduced herein below:-

**"1.संक्षिप्त नाम, विस्तार और प्रारंभ:-**

- I. यह नियमावली 'बिहार मोटनवाहन दुर्घटना दावा न्यायाधिकरण (गठन एवं सेवाशर्त) नियमावली, 2023' कही जा सकेगी।
- II. इसका विस्तार संपूर्ण बिहार राज्य में होगा।
- III. यह अधिसूचना के बिहार बजट में प्रकाशन की तिथि से प्रवृत्त होगी।

**15. निरसन एवं व्यावृत्ति:-**

- I. इस अधिसूचना के बिहार गजट में प्रकाशन के उपरान्त इस नियमावली के अनुसार प्रमंडल स्तर पर दावा न्यायाधिकरण के गठन एवं क्रियान्वयन प्रारंभ होने तक बिहार दुर्घटना दावा न्यायाधिकरण नियमावली, 1961 के तहत जिलों में पूर्व से गठित दावा न्यायाधिकरण दायर दावा वादों को निष्पादित करेंगे।
- II. इस अधिसूचना के बिहार गजट में प्रकाशन की तिथि से बिहार मोटरगाड़ी (संशोधन-1) नियमावली, 2021 के माध्यम से अंत



:स्थापित नियम-225(A) से 225 (F), अंतःस्थापित/ प्रतिस्थापित प्रपत्र तथा नियम-226 से नियम- 247 में किए गए संशोधन तथा बिहार मोटरवाहन दुर्घटना दावा न्यायाधिकरण (संशोधन) नियमावली, 2021 के माध्यम से बिहार मोटरवाहन दुर्घटना दावा न्यायाधिकरण नियमावली, 1961 में किए गए संशोधन विलोपित समझे जाएँगे।

III. परिवहन विभाग द्वारा निर्गत अधिसूचना संख्या-4047, दिनांक 29.05.2023 के प्रावधानों के अंतर्गत पूर्व में की गयी कोई भी कार्रवाई इस नियम के अधीन कार्रवाई मानी जायेगी।

बिहार गजट में पूर्व में प्रकाशित त्रुटिपूर्ण अधिसूचना सं0-7987, दिनांक- 20.10.2023 को अधिसूचना निर्गमन की तिथि से रद्द किया जाता है। "

6. It is thus submitted by the learned counsel for the petitioner that a right which had stood crystallized in favor of the petitioner by virtue of the aforesaid notification dated 11.08.2021, issued by the Transport Department, Government of Bihar, Patna titled as "Bihar Motor Vehicle (Amendment-1) Rules, 2021", to be effective from 15.09.2021, whereby Section 225F, more particularly 225F (2) of the Motor Vehicles Rules, 1992 has been amended, leading to the petitioner being entitled to payment of a sum of Rs.5 lakh by way of ex gratia amount on account of death of his son in a hit and run case, cannot be snatched by virtue of coming into force of the notification dated 20.10.2023, which has come into effect only from 26.10.2023 and by virtue of Clause 15 thereof, the actions taken under the aforesaid notification dated 11.08.2021, have been saved. Moreover, it is submitted that on the date of death of the son of the petitioner i.e 21.03.2022, on account of being hit by an





unknown truck, resulting in the present case being a hit and run case, the aforesaid notification dated 11.08.2021 had neither been repealed nor had been stayed by the learned Division Bench of this Court, hence the resultant effect would be that the petitioner is entitled to payment of a sum of Rs.5 lakh by way of ex-gratia amount in lieu of death of his son, who died on account of being hit by an unknown truck.

7. *Per contra*, the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the present case that as per the Solatium Scheme, 1989, the petitioner is entitled to only a sum of Rs.25,000/-. It is further submitted that though Section 161 of the Motor Vehicle Act, 1988 has been amended and the amount of compensation for hit and run claims has been increased from Rs. 25,000/- to Rs. 2,00,000/- in cases of death, however, the said amendment has come into effect from 01.04.2022, hence the petitioner shall be liable for payment of a sum of Rs. 25,000/- only, since the death of the son of the petitioner has taken place on 21.03.2022. Nonetheless, the learned counsel for the respondent-State has not been able to dispute that the aforesaid notification dated 11.08.2021, issued by the Transport Department, Government of Bihar, Patna, postulating payment of a sum of Rs.5 lakh by way



of ex gratia amount in case of death in a hit and run case, was in existence as on 21.03.2022, i.e. the date of death of the son of the petitioner on account of being hit by an unknown truck.

8. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the aforesaid notification dated 11.08.2021, issued by the Transport Department, Government of Bihar, Patna, postulates that in a hit and run case, in cases of death, a sum of Rs. 5 lakh, by way of ex gratia amount, would be paid to the next of kin of the deceased and moreover, the said notification dated 11.08.2021 has though been repealed by a subsequent notification dated 20.10.2023, however, with effect from 26.10.2023, hence undeniably during the intervening period, the aforesaid notification dated 11.08.2021 was legally valid, enforceable, applicable and binding upon the respondents, thus the petitioner is entitled to be paid a sum of Rs. 5 lakhs, by way of ex gratia amount.

9. Consequently, I deem it fit and proper to direct the District Magistrate, West Champaran at Bettiah to pay the balance amount of Rs. 4,75,000/- to the petitioner, within a period of eight weeks from today, failing which he shall not draw his salary.



10. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

Kanchan-/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.08.2024
Transmission Date	NA

