

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.207 of 2016**

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1. Uma Devi w/o late Ajay Chaurasiya
2. Ruchi Kumari
3. Juli Kumari both d/o late Ajay Chaurasiya
4. Mohit Kumar s/o late Ajay Chaurasiya all are r/o village Jukan, PS Hulasganj, District Siwan.

... .. Appellant/s

Versus

1. Banti Kumar and Another s/o Uma Shankar Prasad r/o Patel Bhawan, mohalla Ramnagar, PO Siwan, PS Siwan Town, District Siwan.
2. Bimlesh Patel s/o Hari Shankar Patel r/o Mohalla Ramnagar, PO Siwan, PS Siwan town, District Siwan.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Chandra Kant,Advocate  
For the Respondent/s : Mr.Nachiketa Jha,Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**

**ORAL JUDGMENT**

**Date : 13-12-2022**

Heard learned counsel for the appellant and respondent.

2. The appeal has been preferred against the order dated 08.12.2015 passed in M.V Claim Case No. 18 of 2013 by the learned Session Judge, Siwan by which the compensation amount under Section 140 of the Motor Vehicle Act (henceforth for short 'the Act') was cut to 50% inasmuch as direction was given to pay interim compensation only to the extent of 50% after holding that the deceased was also at fault as he was in a state of drunkenness.

3. The matrix of facts giving rise to the



present appeal is/are as follows:-

4. On 28.03.2013, the motorcycle bearing registration no. BR-29J 7398 hit Ajay Chaurashiya, (deceased) who died due to the said collision. As such, the present claim case was filed before the concerned Court. However, during the argument, it came to notice that while it is a fact that the deceased was hit by the motorcycle aforesaid, further fact is that the deceased was in a state of drunkenness and as such, he was also at fault and accordingly, the learned Session Judge, Siwan (concerned Court) chose to grant only half of the interim compensation under Section 140 of the Act to half i.e. Rs. 25,000/-.

5. Aggrieved, the present appeal has been filed.

6. Learned counsel for the appellant submits that it is important to go through Section 140 of the Act which read as follows:-

***“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 owner 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.*

*2. The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of (fifty thousand rupees) and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of (twenty-five thousand rupees).*

*(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.*

*(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.*

(5) *Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.*

*Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163-A”.*

7. He as such, submits that a bare perusal of the Sub-Section 3 shows that the claimant is not required to plead and establish the death or permanent disablement, so far as the interim compensation is concerned and as such, the learned Court erred in passing the order aforesaid.

8. He has cited an order of the Patna High Court in **Kanhaiya Rai and Ors Vs. Sri Dharampal and Ors.** passed by a Division Bench of this Court in LPA No. 1454 of 2000 and it is an appropriate to bring on record paragraph 20 of the said order which read as follows:-



*“In view of my conclusions arrived at above, it is clear that the insurer can not escape from the liability to pay the interim compensation under Section 140 of the Act provided other conditions, as enumerated above, are fulfilled. Once it is found that the insurance policy is in force with regard to use of a motor vehicle at a public place, the Tribunal can pass order against the insurer also. However, at the stage of considering an application under Section 140 of the Act, the Court has to take prima-facie view in the sense that once on the basis of the materials on record it is proved that there is insurance policy in force in terms of provision contained in Chapter XI of the Act against the liability of a third party risk, the Tribunal may pass an order for payment of interim compensation against the insurer. At that stage, the Tribunal cannot hold a mini enquiry nor can it take into consideration the defence, which is available to the insurer, which has to be considered at the time of final determination of the said question under Section 168 of the Act. If at the*



*stage of Section 140 the insurer is allowed to take defence as provided under Section 149(2), then that will frustrate the very object, for which the provision has been made as it cannot be disposed of expeditiously in terms of the statutory provision and the proceeding will linger and in all purposes will assume the character of determination of a final compensation under Section 168 of the Act.”*

9. In the order aforesaid, it has been observed that at that stage, 'the Tribunal' cannot hold a mini enquiry nor can it take into consideration the defence available to the insurer which has to be considered that at the time of final determination of the said question under Section 168 of the Act and if it is allowed, the same will frustrate the very object, for which the provision has been made.

10. Taking into account the aforesaid facts, this Court holds that 'the learned Tribunal' erred in deducting the compensation amount to 50%.

11. Accordingly, the said order dated 08.12.2015 passed by the concerned Court is set aside with the direction to pay interim compensation amount of Rs. 50,000/-



Any interim amount paid during this period shall be deducted from the aforesaid Rs. 50,000/-.

12. With the aforesaid observation, the M.A. No. 207 of 2016 is disposed of.

**(Rajiv Roy, J)**

Jagdish/Neha/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	15.12.2022
Transmission Date	

