

**Sita Devi and anr. Vs. Shailendra Kumar Sinha and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/521663](http://sooperkanoon.com/521663)

**Court :** Jharkhand

**Decided On :** Nov-02-2006

**Reported in :** I(2007)ACC287; [2006(4)JCR677(Jhr)]

**Judge :** M.Y. Eqbal and; D.K. Sinha, JJ.

**Appellant :** Sita Devi and anr.

**Respondent :** Shailendra Kumar Sinha and anr.

**Judgement :**

ORDER

**M.Y. Eqbal, J.**

1. In these appeals filed by the same appellant, since common question of law and facts are involved, they have been heard together and are being disposed of by this common order.

2. M.A. No. 255 of 2005 is directed against the judgment and order dated 18th July, 2005 passed by Motor Vehicles Accident Claims Tribunal, Ranchi whereby he has held that since main application under Section 166 of the Motor Vehicles Act (in short the Act) has been finally disposed of, no order need be passed on the application under Section 140 of the Act.

3. M.A. No. 250 of 2005 is directed against the judgment and award dated 9th September, 2005 passed by the same Motor Vehicle Claims Tribunal under Section 166 of the Act whereby he has dismissed the claim application filed by the appellants.

4. One Pramod Pal @ Pramod Bhgat died in a motor vehicle accident, which took place on 22.5.1993. On the said date the deceased was driving truck-bearing registration No. UHJ-8305. The deceased lost control over the vehicle, which finally dashed against a big tree standing by the side of the road. Said Pramod Pal was immediately sent to R.M.C.H. Ranchi for treatment but could not survive.

5. It transpires from the record and the impugned judgment and award that after death of the deceased in the accident his father filed application only under Section 140 of the Act, which was registered as compensation case No. 174 of 1993. In the said case both the owner and the Insurance Company appeared and filed written statement contesting the claim. During the pendency of the case the claimant (father of the deceased) died and the two sisters of the deceased were substituted and they continued the claim case. In 2003 i.e., after 10 years an application under Section 166 of the Act was filed by the claimants in the same case i.e., Compensation Case No. 174/93 claiming some more compensation.

6. The Tribunal after hearing the parties dismissed the claim case on the following grounds:

(i) The deceased Pramod Pal has himself caused accident in question by driving the truck rashly and negligently and died due to his own fault. Hence, claim application claiming compensation for the accidental death of the deceased is not maintainable.

(ii) The two married sisters of the deceased who are the claimants were not dependent on him claimants have not deposed in their evidence that they have suffered any pecuniary loss on account of death of their brother Pramod Pal.

(iii) The claim application purported to have been filed under Section 166 of the M.V. Act after 10 years i.e., in 2003 is also not maintainable.

7. We have heard Mr. A.K. Lal, learned Counsel for the claimant and Mr. G.C Jha, learned Counsel for the Insurance Company.
8. Both the counsels have made their respective submissions in course of argument when it was asked as to why the parties could not settle the matter outside the Court, both the counsels fairly submitted that parties shall accept the decision that may be given by this Court. In view of the submissions made by learned Counsel and also having regard to the question involved in these appeals, we think it proper to answer the question raised herein.
9. As noticed above, the Tribunal has held that since the deceased caused accident himself because of his own fault, the claimants are not entitled to any compensation. It is well settled that proof of negligence is not the condition precedent in all cases for the grant of compensation. In some cases where cause of accident is not proved then principle of Res ipsa loquitur applies and compensation is awarded to the claimants. Similar fact was involved before the Supreme Court in the case of Pushpabai Parshottam Udeshi and Ors. v. Ranjit Gining and Pressing Co. (P) Ltd. and Anr. : [1977]3SCR372 . In that case the vehicle dashed against a tree while going from Nagpur to Pandhurna. The tree against which the car dashed was uprooted about 9-10' from the ground. In the said case the Supreme Court, dealing with the principle of Res ipsa loquitur, held that for the application of the principle it must be seen that accident in such a manner does not happen in ordinary course of things.
10. In the instant cases four witnesses were examined by the claimants but they are not the eye-witness to the occurrence. On the contrary respondents adduced evidence to show that the accident took place due to rash and negligent driving by the driver of the vehicle.
11. Considering the evidence which have been brought on record and in the light of the principle laid down by the Supreme Court in the above mentioned decision, we are of the view that principle of res ipsa loquitur will not apply in the instant case. The Tribunal has held that sisters of the deceased, being not dependent, the instant claim case is not maintainable. We are unable to accept the view taken by the Tribunal. In the case of Gujarat State Road Transport Corporation Ahmedabad

v. Ramanbhai Prabhatbhai and Ors. : [1987]3SCR404 ,the Supreme Court, very elaborately discussed about the maintainability of the claim case preferred by legal representative and held that even in case of death of 14 years old boy who was not the bread earner of the family, his brother would be entitled to claim compensation. Their Lordships observed:

We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian Society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation, which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have been done in accordance with well known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in *Megjibhai Khimji Vira v. Chaturbhai Taljabhai* and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased.

12. The finding recorded by the Tribunal is that the claim application filed under Section 166 of the Act after ten years from the date of death and that too, in the manner not provided in the rule, is not maintainable. We fully agree with the view taken by the claims tribunal.

13. Considering the entire facts and circumstances of the case, in our considered opinion, grant of interim compensation under Section 140 of the Act by awarding Rs. 50,000/- (rupees fifty thousand) will meet the ends of justice. Admittedly, after the death of the deceased the claim application for interim compensation under Section 140 of the M.V. Act was filed by the father of the deceased and after the death of the father of the deceased, two sisters were substituted. For awarding compensation under Section 140 of the Act proof of negligence is not a condition precedent. Therefore, the appellants are entitled to compensation at-least to the extent of Rs. 50,000/-.

14. As noticed above, learned Counsel for the parties very fairly stated that whatever the compensation is awarded that shall be accepted by way of mutual settlement.

15. Hence, these two appeals are disposed of by directing the Insurance Company to pay a sum of Rs. 50,000/- (rupees fifty thousand) to the claimants/appellants.

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