

**Ram Devi and ors. Vs. Motor Accident Claims Tribunal and ors.**

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**Court :** Rajasthan

**Decided On :** Jul-05-2000

**Reported in :** 2000(4)WLC618; 2000(3)WLN111

**Judge :** B.J. Shethna, J.

**Acts :** [Motor Vehicles Act, 1988](#) - Sections 140 and 166

**Appeal No. :** S.B. Civil Writ Petition No. 1714 of 2000

**Appellant :** Ram Devi and ors.

**Respondent :** Motor Accident Claims Tribunal and ors.

**Advocate for Pet/Ap. :** P.R. Singh, Adv.

**Judgement :**

ORDER

**Shethna, J.**

1. The petitioners are the claimants who have filed claim petition under Sec. 166 read with Sec. 140 of the [Motor Vehicles Act, 1988](#) before the Motor Accident Claims Tribunal - respondent no. 1 in 1993 against the driver Laxman Ram-respondent No. 2, owner Rajesh Kumar- respondent no. 3 and Oriental Insurance Company Ltd. respondent no. 4. Notices were ordered to be issued to all the respondents by the Tribunal. The driver and Insurance Company both were served

but the owner of the offending vehicle was not served inspite of best efforts of the petitioner, therefore, on 2.12.99, a request was made on their behalf before the learned Tribunal to serve the respondent no. 3 owner by publication of notice in local daily newspaper. The learned Tribunal ordered to publish the notice in local daily newspaper 'Dainik Tej' and the next date of hearing was kept on 3.2.2000. Somehow or the other, the notice could not be published due to strike of the government employees at that time. Later on, the case was fixed on 13.3.2000 before the learned Tribunal and the matter was kept on 28.4.2000. On 28.4.2000, on behalf of the claimants, an application was submitted before the learned Tribunal stating that by mistake, the notice could not be collected from the office, therefore, it was prayed that fresh notice be given for publication in the newspaper. However, the learned Tribunal by its order dated 28.4.2000 dismissed that said application and after framing the necessary issues, the next date was fixed for evidence of the claimants. Aggrieved of this order, the petitioners have filed this writ petition.

(2). By passing the impugned order dated 28.4.2000 (Annex. 3) dismissing the application dated 28.4.2000 (annex.2) to serve the respondent no. 2 owner by publication, a gross injustice is done to the claimants- petitioners. To proceed with the claim petition without service to the owner of the offending vehicle would be an exercise in futility because even if the claimants succeed to prove their claim before the Tribunal, the award could not be passed against the insurance company. The reasons assigned by the learned Tribunal in rejecting the application of the petitioners are wholly unsustainable. The learned Tribunal ought to have considered the fact that this is an old claim petition filed by the poor claimants, particularly when on earlier occasion the Tribunal ordered to serve the respondent no. 3 by a public notice, then there was no reason for the learned Tribunal to dismiss the subsequent application on 28.4.2000. Thus, the impugned order passed by the learned Tribunal on the face of it is illegal and liable to be quashed.

(3). It may be stated that the application submitted by the petitioners-claimants before the Tribunal was never objected by the driver or the insurance company.

(4). Under the circumstances, I am of the opinion that the impugned order at Annex. 3 passed by the learned Tribunal is required to be set aside.

(5). Accordingly, this petition is allowed, the impugned order at Annex. 3 dated 28.4.2000 passed by the learned Tribunal dismissing the application of the petitioners dated 28.4.2000 (Annex.2) is hereby quashed and set aside. The application dated 28.4.2000 (Annex.2) is hereby granted. The learned Tribunal shall now permit the petitioners to serve the respondent No.3 - owner of the vehicle by public notice.

(5). Stay petition is also disposed of.

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