

## Anita Devi Vs Sunita Devi

**Court:** Patna High Court

**Date of Decision:** Dec. 5, 2022

**Acts Referred:** Code of Civil Procedure, 1908 " Order 9 Rule 13

**Hon'ble Judges:** Rajiv Roy, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

1. No one appears on call.

2. This case is the best example of how any matter can be dragged on for decades despite the fact that the dust stands settled on 16.3.2012 itself

when the M.A. No. 449 of 2003 was dismissed by a bench of this Court.

3. The M.A. No. 609 of 2016 was preferred challenging the order dated 1.3.2016 in Miscellaneous Appeal Case No. 08 of 2013 by the learned VIIIth

Additional District Judge, Saran (Chapra) by which petition under Order 9 Rule 13 of the Code of Civil Procedure was dismissed.

4. The Matrix of facts giving rise to the present appeal is/are as follows :-

5. The daughter of the claimant-respondent No. 1 namely, Soni Kumari (aged 8 years) met with fatal accident when on 20.8.1996, a Coach Bus

bearing registration No. WB-11-6860 hit the minor girl causing her death.

6. As the minor girl's father Akhileshwar Singh was out of State for work, the mother, Sunita Devi preferred Claim Case No. 52 of 2000.

7. The matter was taken up by the learned IVth Additional District Judge, Saran (Chapra), and vide an order dated 22.8.2003, the learned Court held

as follows :-

(i) the accident occurred due to the rash driving of the bus which hit the minor child without blowing horn, causing her death;

(ii) as such, the applicant is entitled to compensation;

(iii) in view of the fact that the opposite party No. 1, Manoj Kumar Sah (husband of the appellant) failed to provide copy of insurance, he has to

compensate.

8. Accordingly, vide the order aforesaid, direction was given for payment of Rs. 1,12,500/- at the rate of 5 per cent interest.

9. Aggrieved by the said order, M.A. No. 449 of 2003 was preferred which was dismissed for non-compliance of the order dated 26.8.2005.

10. Thereafter, MJC No. 311 of 2010 was filed which was allowed on 17.8.2011 and M.A. No. 449 of 2003 was restored to its original file with

further direction to comply the order dated 26.8.2005 within a period of two weeks.

11. Even the said order dated 17.8.2011 was not complied.

12. Accordingly, the M.A. No. 449 of 2003 was taken up by another bench of this Court and vide an order dated 16.3.2012, the appeal was dismissed

and it is important to bring on record the concluding paragraphs of the said order :-

“This Court, while disposing of restoration petition, directed for complying order dated 26.8.2005 within a period of two weeks and also to make

payment of cost of Rs. 1,000/- with the Patna High Court, Legal Aid Committee. Again after this order, no step was taken by the appellant either to

deposit statutory amount or to make payment of cost imposed by this Court.

Accordingly, case was listed under the heading “For orders on Office Note” on 13.3.2010 on which date none appeared. Today, it was informed

that he has already deposited a cost i.e. Rs. 1,000/-, but statutory amount has not been deposited till date.

Be that as it may, fact remains that peremptory order which was passed on 26.8.2005 has not been complied with and the claimant/respondent No. 1,

who was entitled to get compensation amount immediately after the order of Claims Tribunal has been restrained from receiving the compensation

amount for such a long time. Accident had occurred in the year 1996.

In view of non compliance of peremptory order, the appeal stands dismissed.

Let a copy of this order be sent to the court below forthwith.

13. However, still the matter was not put to rest and M.A. No. 08 of 2013 was filed before the learned District Judge, Saran, Chapra for setting aside

the order and decree dated 22.8.2003 in the Case No. 52 of 2000. This was filed by the wife of Manoj Kumar Sah stating therein that her husband

died on 27.12.2013 and some imposter preferred the M.A. No. 449 of 2003.

14. The matter was taken up on 1.3.2016 by the learned VIIIth Additional District Judge, Saran, Chapra and after holding that the appeal was filed

before the Patna High Court on 3.12.2003 when her husband was alive and further the M.A. No. 449 of 2003 has already been dismissed on

14.3.2012, nothing remains and accordingly the said M.A. No. 08 of 2013 was dismissed.

15. Aggrieved, the present appeal has been filed.

16. As stated in the initial paragraph, this is how the case can be dragged for two decades denying the legitimate right to the claimant.

17. Be that as it may, since no one has appeared on behalf of the appellant, the present appeal is dismissed for non-prosecution.