

## National Insurance Company Ltd. Vs Most. Malbhogi Devi and Others

**Court:** Patna High Court

**Date of Decision:** Dec. 14, 2007

**Acts Referred:** Motor Vehicles Act, 1988 " Section 140, 173(3)

**Citation:** (2008) 1 PLJR 271

**Hon'ble Judges:** S.N. Hussain, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

S.N. Hussain, J.

Heard learned counsel for the appellant and learned counsel for the claimant respondent No. 1. This miscellaneous

appeal has been filed on behalf of the appellant-National Insurance Company Ltd. against order dated 21.8.2004 passed in Claim Case No. 35 of

1994, by which the learned 1st Additional District Judge, Darbhanga, directed the Company (appellant) to pay Rs. 50,000/- as interim

compensation to the claimant (respondent No. 1) within thirty days from the date of the said order.

2. Learned counsel for the appellant submits that although the Insurance Policy was in force from 20.1.1994 to 28.1.1995 and the accident took

place on 28.6.1994 and the claim case was filed immediately thereafter, but at that time the liability of the Company for interim compensation

under the provision of Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for the sake of brevity) was fixed only up

to Rs. 25,000/-and hence the order of the learned court below fixing the interim compensation as Rs. 50,000/- was against the specific provisions

of the Act. In that regard, he also relies upon a decision of this Court in case of the New India Assurance Co. Ltd. Vs. Yasoda Devi and Others, .

3. On the other hand, learned counsel for the claimant-respondent No. 1 opposes the contention of the learned counsel for the appellant and

submits that the claim case continued from 1994 till date and about thirteen years have lapsed and the petition for interim compensation was filed

on 20.3.2004, whereas, the amendment of Section 140 of the Act came into force on 10.9.1994. She also relies upon a decision of this Court in

the case of National Insurance Co. Ltd. Vs. Kurshida Begum, , in which it has been held that so far the principles governing compensation amount

are concerned, the Tribunal was free to adopt the principles as laid down under the amended Act, 1994 as the decision was made after coming

into force of the amending Act. However, the said order of this Court is with respect to interim compensation.

4. Considering the entire matter in detail and also considering that claimant-respondent No. 1 is the widow of the deceased and the claim case is

continuing for the last about 13 years for one reason or the other, this miscellaneous appeal is disposed of without any interference in the impugned

order of the learned court below except that the amount paid or to be paid by the appellant to the claimant in terms of the said order would be

subject to the final result of the claim case. At the time of final hearing of the claim case, the learned court below should consider the aforesaid

matter in view of the specific provisions of law and the case laws mentioned above. Since the matter is very old, the learned court below is

directed to expedite the hearing and disposal of the claim case after considering all the points raised by the parties in accordance with law.

5. Learned counsel for the appellant submits that the appellant had already deposited Rs. 25,000/- at the time of filing of the miscellaneous appeal

under the provision of Section 173(3) of the Act, which may be given to claimant-respondent No. 1.

6. In that view of the matter, let the said amount deposited by the appellant be remitted to the learned court below for payment to the claimant-

respondent No. 1 immediately without any delay. So far the order of penal interest passed by the learned court below is concerned, penal interest

will be levied at the said rate only if the appellant-Insurance Company does not pay the remaining Rs. 25,000/- to the claimant within sixty days

from today in the court below.