

## JUDGMENT


Dayal, CJ

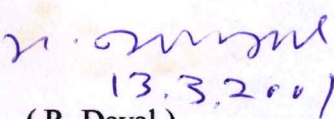
This appeal has been filed by National Insurance Company Limited against the order dated 18<sup>th</sup> July, 2000 by the Motor Accidents Claims Tribunal, East and North Sikkim, at Gangtok granting interim compensation of Rs.50,000/- to respondent Nos. 1 and 2. Interim compensation was granted by the learned Tribunal holding that respondent Nos. 1 and 2, the claimants had established a prima facie case that their son Dipak Kumar Pradhan who was working as a handy-boy on truck No.SK03/0941 died when the truck fell down in the Teesta River and was swept away by its turbulent current at around 9.30 p.m. on 2.10.99 near Hanuman Mandir, Likhubir area when the truck was coming from Siliguri. Body of Dipak Kumar Pradhan was not found, and, as such, death certificate could also not be filed, though FIR with respect to the accident had been lodged. Learned Tribunal recorded the statement of the driver Gyan Kumar Tamang who also sustained injuries on account of the accident and who stated that as a result of the accident, he fell unconscious and regained consciousness only on the next day at around 7.30 a.m. and when he looked for his vehicle and the handy-boy he could not find them. Learned Counsel for the appellant submits that since the dead body could not be found, ~~the~~<sup>the</sup> respondent Nos. 1 and 2 have not established the factum of death. In our opinion, recovery of the dead body is not the essential pre-requisite for holding the occurrence of death. In the circumstances, we find no reason to differ from the learned Tribunal that, prima facie, respondent Nos. 1 and 2 have established that Dipak Kumar Pradhan died on account of the accident. It is unfortunate that the Insurance

*M. Singh*

Company did not choose to make payment of interim compensation despite the order of the Court. The learned Counsel submits that the appellant Company did not make the payment, since it filed the appeal and the respondent Nos. 1 and 2 did not seek execution. The attitude adopted by the Insurance Company cannot be commended. Insurance Company must know that mere filing of an appeal does not operate as a stay of the impugned order. They should also be conscious of their social obligation with respect to the grant of interim relief. They must be quick in making voluntary compliance with the order of the Court in such matters.

In the circumstances, we dismiss the appeal with cost computed at Rs.10,000/- (Rupees ten thousand).

  
( A. Deb )  
Judge  
13.03.2001

  
( R. Dayal )  
Chief Justice  
13.03.2001

at/