

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.138 of 2015

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1. Chandrakanti Gupta W/o Late Jitendra Gupta
2. Bikrant Kumar
3. Vishal Kumar
4. Smt. Mamta Kumari
5. Smt. Sweta Kumari All the Sons and daughter of Late Jitendra Kumar Gupta All the resident of Mohalla- Murgiyachak, Post- Munger, P.S.- Kotwali, Dist.- Munger- 811201

.... Appellant/s

Versus

1. Sri Susant Kumar son of Sri Jainandan Prasad @ J.N. Prasad Resident of Mohalla- Madhopur, Post- Basudeopur, P.S.- Kotwali, Dist.- Munger, Pin-811201 (Bihar)
2. The Manager, Policy No.- 98/ 6700241 Munger Branch,
3. The National Insurance Company Ltd., Munger, At- Bara Bazar Munger.
4. Sri Shambhu Nath Choudhary @ Jaiswal S/o Sri Bhagwat Vill- Madhopur Munger, P.O. Basudeopur Munger, P.S. Kotwali, Dist- Munger.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Kumar Choudhary, Adv.
For the Respondent/s : Mr. Ashok Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

4 15-09-2015 Heard counsel for the appellants and the respondents.

In this case, the appellants have filed Claim Case No.90 of 2000 claiming that on 9th January 1999 at about 4:30 P.M. while Jitendra Kumar Gupta was going to Jamalpr Railway Station Taxi Stand for catching a trekker for Munger, another tractor bearing Regd.No. BR-08 / 6274 dashed him on account of which his left leg was fractured and he fell down.

In the claim application, National Insurance Company was also impleaded as party. The court after examining materials on record i.e. Oral and documentary, has framed



altogether nine issues. The applicant has examined altogether nine witnesses and exhibited documentary Ext-1 to Ext-6. The other side has also examined one witness O.P.W.1 i.e. the owner of the vehicle. The court below has decided the case on each point of the issues and found that the claimant was entitled to compensation of Rs.55,000/-. That was challenged before this Court in M.A.No. 262 of 2005 claiming that the compensation amount is on lower side, at least, it should be enhanced. Being not satisfied with the order passed in the Miscellaneous application, appellant filed Review application No. 41 of 2009 which was dismissed vide order dated 4th September 2009. Thereafter LPA No. 1096 of 2010 was filed, that was dismissed being not maintainable. Thereafter SLP No. CC 12499 of 2011 was filed which was rejected having found no merit.

Counsel for the appellants submits that in that proceeding, the issue was not related to the death of the victim but related to compensation with respect to fracture of leg and on that ground compensation was computed. Here the question is computation of compensation amount on account of death of victim which is different to earlier proceeding. All through enhancement of compensation was questioned. The fact is that the victim died on account of accident and, the issue for adjudication in the present case is quite different to the issue that

has been raised and decided and as such, it should be reopened and he should be given proper compensation on account of death of the victim.

Before this Court, the impugned order does not deal with death of the victim, it only deals with the fracture in the leg so much so that fact of death could have been raised in the earlier proceeding i.e. M.A.No. 262 of 2005 but this issue was not raised and at subsequent stage the appellant has claimed that the victim had died on account of that accident. Only claim was that his leg was fractured on account of accident. At no point of time they ever made claim that the victim died on account of accident. The order passed by the lower court has been approved everywhere now the appellant cannot be allowed to challenge the same award which was earlier subject matter of M.A.No.262 of 2005 and subsequent proceedings. It is completely barred under res judicata. This Court cannot reopen the proceeding which has been decided by this Court in earlier proceeding and as such, this Court does not find any merit in the present appeal.

Accordingly, this appeal is dismissed.

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(Shivaji Pandey, J)