

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.619 of 2012

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Sunil Prasad @ Sunil Kumar, son of Sri Shiv Kumar Prasad, Village + P.O. Madhopur, P.S. – Chandi, District – Nalanda.

(Applicants/ Claimants)... Appellant/s

Versus

1. Sri Naveen Kumar, son of Sri Rampreet Prasad Singh owner of commander Jeep Bearing No. BR-21A-4294, at + P.O.-Rukhai P.S. Chandi, District – Nalanda.
2. Sri Ranjay Kumar, son of Sri Ram Kishore Sharma, driver of Commander Jeep Bearing No. BR-21-4294 at + P.O. + P.S.-Sare, District- Nalanda.
3. The Branch Manager, the New India Insurance Co. Ltd., LIC Building, Ranchi Road, Bhoraopar, Bihar Sharif, Nalanda.

.... (Opposite Parties) Respondents

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Appearance :

For the Appellant/s : Mr. Rabi Bhushan Prasad no. 1, Advocate

For respondent no. 3 : Mr. Sanjay Singh, Advocate
Mr. Bimlesh Jha, Advocate
Mr. Rudal Singh, Advocated

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 27-01-2015

Heard the parties.

2. This is an Appeal on behalf of claimant seeking enhancement of the compensation awarded by the Additional District and Sessions Judge, Fast Track Court-1, Nalanda at Bihar Sharif in Claim Case No. 39 of 2002 vide judgment and Award dated 15th February 2012.

3. The claimant appellant sustained fracture injury on



upper 3rd shaft femur with internal fixation as indicated in the injury report, kept at Exhibit-6 and come forward with a claim application seeking compensation of Rs.2,00,000/- (two lacs) as sufferings and compensation and medical expenses etc.. The Tribunal on basis of the medicine purchase bills arrived at conclusion that around Rs.33,000/- (thirty three thousand) is the expenditure against medicines and further added around Rs.7,000/- (seven thousand) towards other expenses and awarded a sum of Rs.40,000/- with interest @ 6 % *per annum* for the reasons as assigned in the judgment aforesaid.

4. It is submitted that the claimant appellant has suffered fracture though, in the medical report there is nothing about the percentage of disability, if any, but he has suffered a lot during treatment for about six months insertion of iron rods loss of reduction in business etc.. It is also submitted that in view of the provisions as contemplated under Railway Claims Tribunal Act, 1987 as per First Schedule, a sum of Rs.40,000/- (forty thousand) could have been granted as compensation to the loss suffered by him but as pointed out by the learned counsel representing Insurance respondent no.3, in view of the Second Schedule of the Motor Vehicles Act, 1988, the alleged injury suffered by the appellant does not come under the purview of any

sort of disablements. However, the Tribunal has already granted the Award as per the bills produced by him and nothing more is required to be paid.

5. Much stress is given by learned counsel representing the appellant that reduction of future prospects and business etc. has not been considered besides required nutritious food and expenditure towards bringing the appellant from the place of occurrence to Patna and his stay during the period of treatment with required attendants etc.

6. True it is, there is nothing in detail on the record to show the actual expenditure towards all such heads but this much has come from the mouth of the witness examined that the claimant appellant remained at Patna for treatment and during the period he had no earnings. Taking into consideration all such aspects and taking the case of the claimant as a general damage and being inspired from the provisions as contemplated in the Railway Claims Tribunal Act, 1987 specially in absence of any sort of disablement applicable in the case of the claimant appellant as mentioned in The Second Schedule of the Motor Vehicles Act, 1988 a sum of Rs. 20,000/- more may be reasonable compensation to be paid to the claimant appellant. Accordingly, the Award of Rs.40,000/- (forty thousand) as awarded vide judgment dated 15th

February 2012 by the Additional District and Sessions Judge, Fast Track Court-1, Nalanda at Bihar Sharif in Claim Case No. 39 of 2002 is modified and enhanced up to Rs.60,000/- (sixty thousand) with interest as awarded by the Tribunal.

7. The Insurer respondent no.3 is directed to satisfy the enhanced Award within a month from today with interest as awarded by the Tribunal, after deducting the amount already paid.

(Akhilesh Chandra, J)

Ashwini/-

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