

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.618 of 2011

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Pappu Mistry S/o Satendra Mistry, R/o Village - Damodar, P.S.- Atari, Distt.-Gaya.

.... Appellant/s

Versus

1. The United India Insurance Co. Ltd. through its Divisional Manager at Ramanuj Bhawan 371/A, A.P. Colony, Gaya.
2. Ranjit Kumar, Resident of A. Kharaua, P.S.- Atai, Distt.- Gaya owner of the Jeep No - BR-2B-8373.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravindra Kumar Sinha

For the Respondent/s : Mr. Syed Qaisar Hasan, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-11-2015

Heard learned counsel for the appellant and learned counsel for the Insurance Company.

In this case, the victim-claimant has challenged the Judgment dated 16.03.2011 and Award dated 06.04.2011 whereby and whereunder the court below has granted the compensation amount to the tune of Rs. 2,09,400/-.

From the record it appears that the appellant was dashed by a Jeep bearing registration no. BR-2B-8373 on account of rash and negligent driving of the driver of aforesaid Jeep which caused amputation of leg of victim, on that account, a Police case, vide Wazirganj P.S. Case No. 59/2009 under sections 279, 337 and 338 I.P.C. was registered, apart from that the appellant filed a claim case, vide M.A. No. 105 of 2010/130

of 2009.

The Tribunal has granted the compensation amount under the different headings, arrived to a conclusion that there will be 30% functional reduction of his skill and as such, the amount was calculated at 30% of Rs. 36,000/-.

Counsel for the appellant submits that the court below has misdirected himself and has not properly considered the amount which the appellant is entitled to, as he was a Carpenter, was earning Rs. 4,500/-per month. The court has rejected the claim and arrived to a conclusion that as the victim has not produced any material to suggest his earning, accordingly, the court below has arrived to a finding of his earning Rs. 3,000/- per month.

Counsel for the appellant submits that Doctor has given the certificate of reduction of ability by 70% whereas the court below has recorded disability by 30%. The amputation has been affected below knee, as victim was a Carpenter, it is very difficult for him to perform his 100% work by one leg, as the work of Carpenter requires some times to perform certain work in standing posture and as such, the basis of calculation at 30% loss is completely illegal and not sustainable. He has further submitted that the Tribunal has given very meager amount under medical treatment i.e. Rs. 10,000/- whereas for special diet and for mental pain only Rs. 5,000/- has been given which

is a very lower side, it should be in a higher side, so much so, the court has not given any compensation for the loss of earning during the period of medical treatment of his leg and also for future medical expenses, nothing has been granted. It has further been argued that the court has not taken into consideration the loss of amenities including loss of prospect of marriage and loss of expectation of life has not been taken into consideration and in support of the submission, he has relied upon the judgment reported in **2012 (2) PLJR 142 SC** (Govind Yadav vs. the New India Insurance Company Ltd.)

Counsel for the Insurance Company has challenged the argument of the appellant and submitted that as the appellant has not produced any material evidence to show his earning Rs. 4,500/ per month, the court below has rightly arrived to a finding of his earning Rs. 3,000/- per month, so much so, loss of future earning has been shown to be 30%, there is nothing wrong in the calculation and the court has also awarded the amount under the heading for medical expenses including the court has also granted the amount under the heading for mental pain and suffering, so the order of the Tribunal cannot be said to be wrong in the eye of law.

Having considered the rival contentions of the parties, admittedly the appellant was a Carpenter who is supposed to be a skill worker, the amount that has been given to

the appellant of his earning Rs.150/- per day cannot be said to be in a higher side and this Court feels that the amount of Rs. 4,500/- per month is proper amount of the earning of the appellant. So far loss of earning, the court has arrived to 30%, if the leg of a person will be below knee is amputated, at least it will cause 50% loss in the future earning so this Court is of the view that the court below has wrongly arrived to a finding of loss of 30%, it should have been 50% for the future earning, for loss of earning during the period of treatment as there is no material to suggest that what was the period the appellant was out of job, in such circumstance, it will be treated that the appellant was out of job at least for one month accordingly, he will be entitled to the compensation as 50% of the amount. So far medical expenses is concerned, Rs. 10,000/- has been given is a proper amount. So far the artificial leg is concerned, it will be at least incurred the amount of Rs. 20,000/- so that amount should be added and for future medical expenses Rs. 10,000/- to be added in gross total, for mental pain, suffering and trauma including loss of amenities and loss of expectation of life, this Court is of the view that the amount of 30% of compensation amount will be proper amount to be added, is sum total under the aforesaid items accordingly. The award dated 16.3.2011 is modified to the aforesaid extent and the court below is directed to calculate the amount in terms of the direction given above

and revise the compensation amount. If the Insurance Company has not paid the amount, the same should be paid within a period of three months from the date of revision of the Award including 6% amount from the date of filing of the application.

Accordingly, this appeal is allowed.

The lower court records be remitted back forthwith.

(Shivaji Pandey, J)

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