

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1044 of 2010

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1. Most. Pramila Devi, widow of late Rajvanshi @ Suryavanshi Das

2. Rajesh Das, son of late Rajvanshi @ Suryavanshi Das

3. Ratnesh Das, son of late Rajvanshi @ Suryavanshi Das

4. Rupa, minor daughter of late Rajvanshi @ Suryavanshi Das

Serial no. 3 and 4 are minor son and daughter of late Rajvanshi @ Suryavanshi Das under the guardianship of their mother – appellant no. 1.

All are resident of village and P.O. – Gaura, P.S. – Sadar, District – Sitamarhi. At present residing mohalla – Atardah, P.S. – Sadar, District – Muzaffarpur (Claimants no. 1 to 4).

.... Appellants

Versus

1. M/S Gupta Transport Company through its partner Madan Kumar, son of Kaushal Kishore Choudhary, Amar Jyoti Travels, Imli Chatti, P.S. Brahampura, District – Muzaffarpur (Opposite Party No. 1).

2. The Divisional Manager, The New India Assurance Company Ltd. Poddar Complex, Club Road, P.S. – Mithanpura, District – Muzaffarpur (Opposite Party No. 2).

.... Respondents

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Appearance :

For the Appellant/s : Mr. Mukesh Prasad Singh, Advocate

For the Respondent/s : Mr. M.P. Jaiswal, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 23-01-2015

Heard learned counsel for the parties.

2. This is an appeal preferred by the claimant appellant seeking enhancement of the

quantum of the award as granted vide judgment dated 5th August 2010 in Claim Case No. 148/2008 by learned 5th Additional District Judge, F.T.C. cum Claim Tribunal, Muzaffarpur.

3. Since everything appears admitted about manner, place of accident, time and authority of the claimant, there appears no reason to go into further details.

4. The only ground taken in this appeal is that instead of deduction of personal expenditure of 1/4th there is deduction of 1/3rd and notional income, taking into consideration is 15,000/- per annum which ought to have been 36,000/- per annum.

5. This is undisputed that instant appeal has been filed on 22nd December, 2010 but as it is pointed out and appears from the record of the court below that entire amount in terms of award with interest was deposited by the insurance before the court below on 31st January, 2011, through cheque worth Rs. 1,02,859/-, since, record had been deposited in the record room, it was called for and subsequently on the prayer of the claimant appellant it was deposited in their bank account for further needfuls in terms of the award.

6. On the basis of above, it is submitted by





learned counsel for the respondent no. 2 that since the appellant has accepted the amount against award and at no point of time he raised any objection or intimated the insurer or the claim tribunal about either intention to file appeal or filing of the appeal. It should be taken into consideration that the appellant is satisfied with the award and accepted the amount as full and final settlement. An attempt is also made to take inspiration from the decision of the Apex Court in case ***New India Assurance Co. Ltd. Vs. Sri Venkata Padmavathi R & B Rice Mill reported in (2000) 10 SCC 334.***

7. On going through the above case law, it is clear that under the facts and circumstances the same is not applicable, but at the same time, it cannot be ignored that the difference, if any, in the event of any interference in the award, as prayed for, cannot be substantial, and that too the appellant by their own conduct makes them disentitled since without any objection or specially intimation of filing of the appeal, accepted the amount so paid as full and final satisfaction against the award. Had they been able to intimate the insurer about filing of present appeal. This could have been decided on their appearance *suo motu* at earlier stage, but it has to travel for five odd years, causing wastage of precious time of the court and other processes.

8. Thus, without any interference in the award of the claim tribunal which has already satisfied, this appeal stands disposed of. Learned counsel for the appellants are at liberty to seek review about with the period of fixed deposits as ordered from Claim Tribunal below.

Rajeev/-

(Akhilesh Chandra, J.)

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