

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.293 of 2012

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1. The New India Assurance Company Ltd. Through Its Branch Manager Purnea Branch, N.H.312, Distt-Purnea, Appeal And Appellant Through The Deputy Manager & Constituted Attorney, Regional Office, The New India Assurance Co. Ltd., 6th Floor, Bsfc Building Frazer Road, Patna

.... Appellant/s

Versus

1. Muhammad Hakim S/O Late Habib R/O Vill-Rasulpur, P.S.-Manihari, Distt-Katihar
2. Sanjay Singh S/O Lt. Ramadhar Singh R/O Vill-Begampur, P.S.-K.Nagar, Distt-Purnea
3. Manoj Singh S/O Lt. Ramadhar Singh R/O Vill-Begampur, P.S.-K.Nagar, Distt-Purnea
4. Anil Singh S/O Lt. Ramadhar Singh R/O Vill-Begampur, P.S.-K.Nagar, Distt-Purnea
5. Kanhaiya Sharma @ Rajoo S/O Lt. Anandi Sharma R/O Vill-Kajra Basantpur, P.S./P.O.-Mansahi, Distt-Katihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. DURGESH KUMAR SINGH
For the Respondent/s : Mr. Md. Musowir, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 25-08-2015

Heard learned counsel for the appellant and learned counsel for the respondents.

2. In the present appeal the appellant is challenging the judgment/award dated 19.12.2011 passed by the Additional District Judge, III-cum-MACT, Katihar in Claim Case No.15 of 2003 by which the court below has calculated the compensation amount of Rs. 4,16,300/-.

3. A brief fact of the case is that on account of negligent and rash driving of vehicle bearing registration no. BR-11-C-



1327 the claimant has received injury which led to fracture of his two legs. As per claim of the claimant, he along with his son was boarded in a Jeep at Manihari for going to his house. When they got down from the Jeep in order to proceed for his house as he reached at Rasulpur chowk the offending vehicle, mini jeep came and hit him resulted into causing severe injuries to both legs. Thereafter he was admitted in hospital remained confined to bed for 75 days. As per his claim he was earning Rs.3,000/- per month through sale of the milk, on account of accident his efficiency has reduced, during treatment he remained confined to the hospital without earning. As per the claimant he was in hospital for 75 days even medical treatment did not cure him 100%, after recovery his earning capacity was permanently reduced to 60% as in both legs iron rod has been fixed for jointing two fracture bones. The Tribunal has calculated the compensation at the rate of Rs.100/- per day.

4. Learned counsel for the appellant has a limited grievance that instead of calculating the compensation at the rate of Rs.100/- per day it should be calculated at the rate of Rs.50/- per day because as per statement of the claimant after recovery his capacity of earning has reduced to 60%. Earlier he was earning Rs.100/- per day, after accident he was earning Rs.50/-. He has submitted that calculation has been made at the rate of Rs.100/-

which is completely wrong in stead it should be calculated at the rate of Rs.50/- which has been disputed by learned counsel for the respondent. He has submitted that the court has not taken into consideration the future prospect as well as pain and suffering it can go up to Rs.1,00,000/-. If both items would be included, the compensation amount will remain same.

5. Having considered the rival contentions of the parties, it appears that the Tribunal in his award has himself stated by selling the milk the claimant was earlier earning Rs.100/- but after accident his earning was confined to Rs.50/- per day. Record shows that the claimant has received injury in both legs and the doctor has fixed iron rod in both legs for joining bones. Though counsel for the appellant has submitted that this is only mode for revival of the leg does not reduce the earning capacity, so much so cannot be treated to be a permanent disablement but from the finding recorded by the Tribunal on the basis of the doctor's certificate it appears that the loss of earning capacity permanently reduced was 60% and as such this court is not going to reopen the issue of suffered permanent disability or temporary disability. Treating to be permanent disability, this Court feels that the Tribunal in stead of calculating the amount of compensation on the basis of Rs.100/-, in view of the statement made by the claimant that after accident his earning

was reduced to Rs.50 as such compensation amount would be calculated at the rate of Rs.50/-. The court has not given any benefit of compensation for future prospect. As the court has come to a finding of 60% permanent reduction of the earning capacity, the Tribunal has not granted the compensation of future prospect as the age of the victim was less than 40. In such view of the matter he is entitled to 50% future prospect. If that amount will be aided under the heading for future prospect there will be little chance or no chance for the variation of compensation amount which has been awarded by the Tribunal. In such view of the matter this Court is not inclined to interfere with the award.

6. Accordingly this appeal is disposed of. Statutory amount which has been deposited in this Court will be returned to the court below and that amount should be released in favour of the claimant. Office is directed to remit back the lower court records forthwith.

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(Shivaji Pandey, J)