

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.629 of 2009

**Against the order dated 21.07.2009 passed by the learned 1st
Additional District Judge-cum-Claim Tribunal, Samastipur in
Claim Case No. 23 of 2005**

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Abdul Quaium, S/o Late Md. Younus, resident of Village – Ghauspur
Sarsauna, P.S. - Bangra, District – Samastipur.

... .. Appellant

Versus

1. Branch Manager, New India Assurance Com. Ltd., Magardahi Ghat Road,
Near Laxmi Talkies, Samastipur through Chief Regional Manager, N.I.A.
Comp Ltd. Patna, Regional Office, Patna.
2. Dhanik Rai, S/o Late Jagdeep Rai, resident of Vill Anandpur Morwa, P.S. -
Tajpur, Dist – Samastipur
3. Rajeshwar Rai, Son of Late Jugeshwar Rai, residents of Vill - Anandpur
Morwa, P.S. - Tajpur, Dist – Samastipur

... .. Respondents

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Appearance :

For the Appellant/s :

For the Respondent :

Mr. Bimlesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-01-2019

No one appears on behalf of the appellant.

2. Heard learned counsel for the respondents.

3. The present miscellaneous appeal has been
preferred, under Section 173 of the Motor Vehicles Act, 1988,
against the order dated 21.07.2009 passed by the learned 1st
Additional District Judge-cum-Claim Tribunal, Samastipur in
Claim Case No. 23 of 2005.

4. Appellant is not satisfied with the amount of
compensation awarded by the Claim Tribunal for accident



caused to the appellant in a motor vehicle accident. Appellant had claimed Rs.2,50,000/- (Two Lacs and Fifty Thousand) and the Tribunal awarded Rs.1,00,000/- (One Lac). The Tribunal did not accept the claim of permanent disablement of 50 per cent of the appellant in the motor vehicle accident. In para 15 of the judgment, the Tribunal has observed as follows:-

“On careful examination of Ext. 3, the handicapped certificate issued by the Chief Medical Officer, Samastipur, I do not find that the accident of infirmity in percentage has assessed to 50 per cent but nowhere it has been stated that it was a permanent disability or it was a temporary which was curable. If the injury report showing fracture of tibia and fibula if believed such fracture are curable and in that event this mode of calculation of compensation, in my considered opinion, would not be applicable. On careful reading of Second Schedule Item No. 5, I find that injury deemed to result in permanent disablement/permanent partial disablement and percentage loss of earning capacity shall be as per Schedule-I under Workmen’s Compensation Act, 1923 but in that Schedule of the Workmen’s Compensation Act from Item No. 11 to 24 deals with case of amputation of lower limb but there is no mentioned of a case of fracture as such this Ext. 3, the handicapped certificate will not be helpful in assessing the compensation.”



5. The appellant has challenged the aforesaid finding as erroneous one before this Court, hence, by order dated 07.10.2015, the Chief Medical Officer, Patna was directed to constitute a Medical Board which must include one Orthopedic Specialist for examination of the disability of the appellant and to submit report. The Board was directed to report about the percentage of disability and whether the disability was permanent or temporary.

6. The report of the Board at Flag R, dated 16.12.2015 would reveal that the Board found mild weakness of left lower limb. Apparently, there is no material to substantiate that the appellant had sustained permanent disablement in the accident alleged rather, the case made out is of claim for injury in the motor accident.

7. Hence, I am not inclined to interfere with the impugned award. Accordingly, this appeal stands dismissed as devoid of any merit.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
CAV DATE	N.A.
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