(2012) 10 PAT CK 0054

In the Patna High Court

Case No : Misc. Appeal No. 619 of 2011

Mahendra Mistry @ Mahendra Vishwakarma APPELLANT

Vs

National Insurance Co. Ltd. and Another RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Citation : (2013) 1 PLJR 869

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Ravindra Kumar Sinha, for the Appellant; Ashok Priyadarshi for the Insurance Co. Ltd., for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Challenge is to the award, dated 26th of May, 2011, passed in MAC Nos. 7 of 2010/186 of 2009 by the 6th Additional District Judge-cum-Motor Vehicle Accident Claim Tribunal, Gaya. The appellant is not satisfied with the compensation, which has been awarded by the Tribunal in the claim case, brought by the petitioner against the respondents including the Insurance Company.

2. The accident or the incident is not denied. The liability of the Insurance Company to pay compensation is also not an issue. The issue, which is sought to be raised by the appellant, is that the Tribunal has not granted him the quantum of compensation, which he was looking for, on primarily three grounds.

3. The first submission is that the Tribunal did not take the actual income of the appellant into consideration in calculating the compensation. The loss of future income or expansion due to price rise has not been taken into consideration and the degree of disablement, which has been found by the Tribunal, does not reflect the actual state of affairs.

4. Counsel, representing the Insurance Company, seriously contests all the submissions. He draws the attention of this Court to the portion and the finding,

contained in paragraph 8, where it is evident that no evidence in support of the income of Rs. 3,500/-, which the appellant was claiming, was produced. It was only a mere assertion. However, the Insurance Company without seriously contesting the figure agreed to a sum of Rs. 3,000/- per month, as a reasonable figure in absence of proof, taking into consideration the minimum wage, which was in existence in the year 2004. The figure of 3,000/- is much higher than the minimum wage, as notified by the State Government at the relevant time.

5. The other aspect with regard to the future income, enhancement, etc., evidence has come on record that the accident did not deter or create any impediment for the petitioner to continue in employment and service. The 50 per cent of disablement was only a certificate obtained for the purposes of compensation. Petitioner involved in an accident and is facing a criminal case, while driving a vehicle on a subsequent date after the so-called accident in which he was supposed to have become disabled. In addition to that despite no clear evidence of disability, emerging from any experts opinion or the evidence to support the certification brought on record, the Insurance Company and the Tribunal did accept or gave a concession that the injury caused to the appellant in the accident did create impediment and disablement and 30 per cent was assessed and taken into consideration in award of the final compensation amount.

6. In view of the evidence, the material and the stand taken by the respondent Insurance Company, the Court is of the opinion that no case for enhancement is made out, especially when the Insurance Company has been magnanimous enough to not seriously contest even areas, which could have been contested and which form the basis for award of compensation in favour of the appellant.

7. The Court, taking into consideration the evidence, is also of the opinion that it is not a case where the petitioner is now deprived of his capability or ability to earn his living for the rest of his life. He is still alive. He is still in employment and he continues to earn for himself.

8. In the above stated circumstances, appeal has no merit, it is dismissed. The Office is directed to return the original records to the Tribunal forthwith.