
(2005) 08 PAT CK 0032

In the Patna High Court

Case No : Civil Revision No. 970 of 1999

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Raj Laxmi Sinha and Others

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Citation : (2005) 08 PAT CK 0032

Final Decision : Dismissed

Judgement

S. Nayer Hussain, J.—Heard learned counsel for the parties.

2. Petitioner is Defendant No. 3 in Motor Vehicle Case No. 5 of 1993 which was filed by the claimants (opposite party Nos. 1 and 2) in which Award was prepared on 7.1.1998 by which an amount of Rs. 20,17,370/- was awarded with interest at the rate of 6% per annum excluding future expenses till their realisation. This Award was challenged by the other side but it was affirmed upto the Hon'ble Apex Court, whereafter Certificate proceeding for the same was initiated in which two cheques of Rs. 10,95,530/- each was handed over to the claimants for full satisfaction of the said Award and accordingly on 30.1.1999 the District Certificate Officer ordered to drop the said Certificate proceeding. Immediately thereafter on 16.2.1999 the claimants (O.P. Nos. 1 and 2) filed a petition u/s 152 of the CPC (hereinafter referred to as "the Code" for the sake of brevity) for correction of the arithmetical mistake in adding the various heads in the said Award. The said petition has been allowed by the learned 9th Additional District Judge-cum-Motor Vehicles Accident Claim Tribunal, Bhojpur, Arrah, by the impugned order dated 22.3.1999, which is under challenge in this Civil Revision.

3. Learned counsel for the petitioner has submitted that Section 175 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for the sake of brevity) provided a bar on the jurisdiction of Civil Court in an area where Claims Tribunal has been constituted with respect to the claim of compensation under the Act. He further claimed that the Award, having been affirmed upto the Hon'ble Apex Court and fully complied by the petitioner, can not be legally modified after full

and final satisfaction of the claimants recorded in the Certificate proceeding. He relied upon a decision in case of United India Insurance Co. Ltd. Vs. Jyotsnaben and Others, , in which it was held that the claimants will not be entitled to more compensation than claimed by him. He further stated that neither in the appeals nor in the certificate proceeding the claimants ever raised any such defect in the Award and hence the Award is binding upon them and modification in such Judgment and Award after full and final settlement, can not be allowed as has been held in 1997 ACC 389.

4. On the other hand, learned counsel for the opposite parties submitted that the mistake was apparent from the Award itself in adding the amounts awarded under different heads and the amounts so awarded under the different heads having been affirmed by the higher Courts, the said awarded amounts under different heads can not be modified, but if there is an error in adding the said awarded amounts under different heads, the learned Court below had full authority and jurisdiction to correct its own arithmetical mistake. In this connection, the learned counsel for the opposite parties relied upon a decision of this Court in case of Rewa Mahto Vs. Delu Mahto and Others, , and also on another decision of this Court reported in 1996 PLR 411, in which it was held that in such matters the Court can exercise its power even if the Award is executed. He further submitted that the petitioner-Judgment Debtor had not averred that the addition in the Award was not correct, hence he submitted that the impugned order is legal and proper and requires no interference.

5. After hearing learned counsel for the parties and after perusing the materials on record including the impugned order and the relevant provisions of law, it is quite apparent that Section 169(2) of the Act specifically provides that the Claims Tribunal shall have all the powers of a Civil Court for the purposes prescribed or may be prescribed and the Claims Tribunal shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Hence, it is quite apparent that if the Claims Tribunal have all the powers of a Civil Court for the said purposes, it will consequently have the inherent power to correct its own mistake u/s 152 of the Code and the bar of Section 175 with respect to the jurisdiction of the Civil Court can not be made applicable to the instant case as the impugned order has been passed not by a Civil Court but by a Claims Tribunal. Hence, I hold that the petition u/s 152 of the Code filed by the claimants was maintainable in the eye of law.

6. From perusal of the Award, it is quite apparent that various amounts have been awarded under various heads as per the provision of law. The said awarded amounts under various heads have been affirmed upto the Hon'ble Apex Court and hence it is the duty of the petitioner-Judgment Debtor to pay all the various amounts under separate heads as awarded by the Claims Tribunal. It is also apparent from the said Award that the total amount after adding all those heads have been noted as Rs. 20,17,370/-. But a simple calculation by way of addition reveals that it should have been Rs. 22,67,370/- and hence there is a clear error

of calculation in the Award due to which an amount has been paid which is Rs. 2,50,000/- less that the actually awarded amount. Thus, it was not only the inherent power of the Court below but was its legal duty also to correct the said arithmetical mistake and direct for payment of the balance amount.

7. It is quite true that after the satisfaction of the Award, the Court can not proceed further with respect to the decision on merit or law. But definitely the Court can not be functus-officio for correction of the decree/Award due to obvious arithmetical error committed therein. Furthermore, if the decree/Award does not agree with the express terms of Judgment, the Court/Tribunal can very well exercise its power to correct the same even if the decree/Award is executed.

8. In the said circumstances, I do not find any illegality or jurisdictional error in the impugned order and accordingly this Civil Revision is dismissed.