(2006) 11 PAT CK 0018

In the Patna High Court

Case No : C.R. No. 2276 of 2005

The Chairman, The New India Assurance Com. Ltd. — APPELLANT

Vs

Most. Prabhawati Devi and Others — RESPONDENT

Date of Decision : 20-11-2006

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153

Citation : (2007) 1 PLJR 337

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ashok Priyadarshi, for the Appellant; Jagdish Prasad, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This revision is directed against the order dated 7.9.2005 passed by the Motor Vehicles Accident Claims Tribunal, Buxar (District Judge, Buxar) in Motor Vehicles Claim Case No. 12 of 2002, whereby the application filed by the petitioner-the New India Assurance Company Limited for review of order dated 16.8.2003, has been rejected on the ground that such an application is not maintainable. Short facts, giving rise to the present application, are that opposite party No. 1 laid claim for compensation before the Motor Vehicles Accident Claims Tribunal, hereinafter referred to as Tribunal''. The Tribunal, by order dated 16.8.2003, allowed interim compensation of Rs. 25000/- and directed the petitioner-New India Assurance Company, hereinafter referred to as ''the Company'' to pay the amount within stipulated time. Thereafter, the Company, filed application for review of the aforesaid order, inter alia, on the ground that the cover note which formed basis for claiming compensation is fake. The Tribunal, without going into the said submission, came to the conclusion that the review application is not maintainable and accordingly, rejected the application for review.

2. Mr. Ashok Priyadarshi, appearing on behalf of the petitioner, submits that as

the Company had alleged that the foundation of the claim, that is, cover note, is fake, the Tribunal ought to have entertained the review application. In support of his submission, he has placed reliance on a judgment of this Court in the case of Munna Kumar Singh Vs. The National Insurance Co. and Others, and my attention has been drawn to the following passage from the said judgment:

"4. In M.A. No. 460 of 2000 an order was passed by Hon''ble Mr. Justice Radha Mohan Prasad placing reliance on the decision of Supreme Court in the case of United India Insurance Co. Ltd. vs. Rajendra Singh reported in (2003)3 SCC 581 wherein it has been held that in case of alleged fraud the Tribunal must entertain an application filed by the aggrieved party under Sections 151, 152 and 153 CPC."

3. Mr. Jagdish Prasad, however, appearing on behalf of the opposite party, contends that, in facts of the present case, the Tribunal did not err in rejecting the application for review.

4. Having appreciated the rival submission, I find substance in the submission of Mr. Priyadarshi and the judgment relied on supports his contention. The claimant sought compensation on the basis of a cover note. On that basis, the Tribunal passed order for grant of interim compensation of Rs. 25000/-. The Company contends that the cover note is fake.

5. In that view of the matter, the Tribunal ought to have, prima facie examined this question and ought not to have rejected the review application being not maintainable.

6. Accordingly, the impugned order is set aside, the matter is remitted back to the Motor Vehicles Accident Claims Tribunal, Buxar to pass fresh order on the application filed by the petitioner, bearing in mind the aforesaid observation within eight weeks from the date of receipt/production of a copy of this order. Application stands allowed.