

(1977) 10 OHC CK 0002
In the Orissa High Court
Case No : Misc. Appeal No. 119 of 1976

Bansidhar Maharana

APPELLANT

Vs

The Orissa State Road Transport Corporation

RESPONDENT

Date of Decision : 10-10-1977

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1978) ACJ 145

Hon'ble Judges : R.N. Mishra, J

Bench : Single Bench

Advocate : R.C. Patnaik and P.K. Mishra, for the Appellant; A. Mohanty and U. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

R.N. Mishra, J.—This appeal u/s 110-D of the Motor Vehicles Act is directed against the award of the 2nd Motor Accident Claims Tribunal of Puri rejecting a claim u/s 110-A of the Act.

2. The Appellant filed an application on 8th April, 1974, alleging that at about 7 a.m. of 8.2.1974 he was proceeding on a bicycle on the National High Way No. V on the Khurda-Balugaon road. The left side of the road was under repair. The Appellant was accordingly going very cautiously on that side. A stage-carriage bus bearing registration No. O.R.K. 2834 belonging to the O.S.R.T.C. came from behind and dashed against the Appellant as a result of which he was thrown to a distance and his bicycle sustained damages. The Appellant became unconscious and remained in that stage for five days. He was initially taken to the Hospital at Banpur and then removed to the S.C.B. Medical College hospital where he received treatment. As a result of the accident, the Appellant suffered mental agony, lost professional work and ability, has been permanently disabled from doing carpenter's work and has suffered physical vigour and sexual capacity. He alleged that the bus was being driven negligently. Accordingly he claimed compensation of Rs. 40,200/- under different heads.

3. The defence raised by the opposite Party was that the bus did not collide with the Appellant or his bicycle. The claimant is an old man with defective eye sight. He became unsteady hearing the horn of the approaching bus and due to his own fault fell into the ditch which had been dug on the left side for the purpose of widening the road. The Appellant was, therefore, not entitled to any compensation. The quantum of compensation claimed was stated to be grossly exaggerated and highly excessive.

4. The Appellant examined four witnesses including himself while on behalf of the opposite Party, the driver and the conductor of the bus were examined as O.P.Ws. 1 and 2 respectively. On behalf of the claimant, a medical certificate certifying that the disability suffered by the Appellant was of permanent nature was marked as Ext. 2 and the discharge summary given by the S.C.B. Medical college hospital was marked as Ext. 3. No documents were produced by the O. Party. The Tribunal came to hold that the involvement of the bus in the accident had not been established and therefore, dismissed the claim application.

5. Mr. Patnaik for the claimant-Appellant contends that the evidence has not been properly read and the conclusion of the Tribunal against the claimant is, therefore, not sustainable in law. The fact that the Appellant sustained injuries at the spot and at the time given by him has not been disputed. The certificate of the doctor under Ext. 2 shows that as a result of ankylosis of the left shoulder joint and damage of the deltoid muscle and partial ankylosis of left elbow joint and the wrist joint, the Appellant has, permanently lost the use of the left hand. Similarly ankylosis of the left knee-joint has made it difficult for the Appellant to walk and sit freely. Ext. 3 shows that the Appellant had suffered an automobile accident and was unconscious for five days. The extent of injuries suffered by the Appellant is, therefore, indicated by these documents and supported by the claimant-Appellant himself as P.W. 1.

6. The main question for consideration is as to whether the Appellant has been able to prove that the cause of his fall was dashing of the bus from behind. In support of this aspect of the Appellant's case, he has examined himself and P.Ws. 2 and 3. The Appellant has said:

...The road at the place had been repaired. The left side non-metal flank i.e. the eastern part had been recently repaired but was not fit for traffic. Therefore, I was proceeding on the left-hand part of the central pitch portion of the road. The bus which caused the accident came from my back side and dashed against the bicycle at its rear. As a result of the impact I was thrown off and fell on the edge of the pitch portion of the road. I became unconscious and later I gained sense at S.C.B. Medical College hospital, Cuttack. The bicycle had been damaged and seized by the police....

I had no knowledge of the bus coming from my back side till the accident happened. At the time of the accident, I was about 2 feet inside the pitch road to the left. The pitch road at the place is of width of about 15 feet or above. Morrum

or Metals had not been heaped on the road sides....

The age of P.W. 1, the claimant, has been recorded as 43 years. There is, therefore, no support for the defence stand that the claimant was an old man not able to see things properly. Nothing has been brought out in his cross examination to support the stand of the Respondent that the Appellant's claim that the bus hit from behind is not true. P.W.3 is a local man aged about 70 years. According to him, he was proceeding to Balugaon on a bicycle and he was at a distance of about 100 cubits behind the Appellant. The bus came from the back side and caused the accident after it passed P.W. 3. The witness describes the occurrence thus:

...At that time I was proceeding to Balugaon on a bicycle and P.W. 1 was also going to Balugaon on a bicycle ahead of me by about 100 cubits. The bus in question came from behind and caused the accident after it passed me. At that time P.W. 1 was proceeding on the left side edge of the pitch portion of the road and the bus dashed against the bicycle. As a result of the impact, P.W. 1 fell down on the left side flank which had been recently repaired. P.W. 1 was unconscious. The bus stopped at a little distance and some persons came to see the victim....

Nothing has been brought out in cross examination which would justify discarding his evidence. The Tribunal has observed:

...P.W. 3 is an old man of 70 years and as he states he was about 100 cubits behind the claimant--cyclist when the accident happened. According to him the bus after passing him dashed against the bicycle of the claimant at its rear. It is difficult to conceive that the old man could notice such detail from a distance of 100 cubits and that too from behind the bus....

P.W. 3 nowhere indicated as to what was the distance of his from the bus at the time of accident. The 100 cubits referred to in his deposition was with reference to the two cyclists moving earlier to point of accident.

In the absence of any cross examination as to visibility of the manner of collision to the witness, the Tribunal was not very justified in brushing aside the evidence by saying that from behind the bus the manner of collision would not have been visible. P.W. 4, the other witness claimed that he had come to ease himself and after finishing the same, he was coming onto the National High Way when the accident happened at a distance of about one hundred feet. He is a young man of 33 years of age. He has described the occurrence thus:

...The claimant was coming on the road on a bicycle and bus which came from behind dashed against the rear of his bicycle. As a result of the impact the claimant and also his bicycle fell on the non-metal flank which had been recently repaired. I cannot describe how exactly he lay injured, but I found him unconscious....

In his cross examination too, there is nothing to disbelieve the evidence.

Admittedly, P.Ws. 3 and 4 are disinterested witnesses. There is no substance in the criticism of Mr. Mohanty for the Respondent that P.W. 4 must be taken to be a chance witness. It is common in the rural areas with people to go a long distance for easing and merely on account of the fact that he had come a long distance from his village, he cannot be disbelieved.

The defence stand was that the road on the left side was dug for repair purposes and was about two feet in depth from the level of the metal portion. The Appellant fell into that small ditch and suffered the injuries. The consistent evidence of P.Ws. 1, 2 and 3 is that the road had already been repaired though it had not been released for use. No cross examination to any of these three witnesses has been addressed on the point of the condition of the road side on the left. The defence stand that there was a ditch, therefore, cannot be accepted.

Admittedly, the bus stopped after the occurrence. O.P.W. 1, the driver, has stated:

...There was no space for me to go right and had I moved to right side the bus would have fallen in the ditch....

It is also in his evidence that no brake had been applied. O.P.W. 2, the conductor, stated that he did not notice any cyclist going ahead of the bus nor had he seen the claimant falling in the ditch. He is, therefore, not a material witness.

7. The burden to establish collision is certainly on the claimant. The claimant has been supported by P.Ws. 3 and 4 and in my opinion the fact that the bus had dashed against the cyclist has been proved. I would accordingly vacate the finding of the Tribunal that the bus did not cause the fall of the Appellant from the cycle.

O.P.W. 1, the driver of the bus, has admitted that there was no space at the spot and he could not negotiate his vehicle by going further right. Once he found a cyclist on his left, it was the duty of the driver as he was coming from behind to avoid any accident and cross the cyclist without injuring him. It is not the case of the driver that the Appellant suddenly swerved to the right and therefore, the driver had no responsibility in the matter. There is an admission of O.P.W. 1 that he even did not apply brakes. In the circumstances, I have no option but to hold that the bus has been driven negligently and if appropriate care had been taken, the accident could have been avoided.

8. Next comes the question as to what should be the appropriate compensation. The Tribunal has found under issue No. 2 that the compensation payable to the Appellant would have been Rs. 12,000/- and this has been calculated by saying that pain and suffering should be compensated by Rs. 5,000/- and loss of income at the rate of Rs. 300/- per month for over two years should be worked out to a round figure of Rs. 7,000/... P.W. 1, the claimant has not breathed a word about the quantum of compensation. P.W. 2 has proved his certificate (Ext. 2) and P.Ws. 3 and 4 are silent regarding the quantum of compensation. It, therefore, follows that in regard to the extent of compensation, there is absolutely no direct

evidence. The extent of injuries is available from Ext. 2. Ext. 3 supports the plea that the claimant was treated in the S.C.B. Medical College hospital. I would, therefore agree with Mr. Mohanty for the Respondent that the assessment made by the Tribunal regarding the quantum of compensation was not justified. On the basis of the documentary evidence, I am prepared to hold that the Appellant did suffer pain, remained unconscious for about five days and under went a course of treatment spread over quite a long period. On that account, he may have compensation to the tune of Rs. 1,800/- in all including the expenses for treatment. The claimant is a carpenter by profession and in the absence of any direct evidence, I am prepared to hold that he must have been absent from normal employment for about six months. His average income per month may be calculated at Rs. 200/- and therefore, he should have compensation of Rs. 1,200/-. Accordingly, I would allow the appeal in part and hold that the claimant-Appellant is entitled to compensation of Rs. 3,000/-.

9. The appeal, is allowed in part and compensation is determined at Rs. 3,000/-. The Respondent is directed to make payment of the same within one month hence, together with interest at the rate of six percent from the date of the application. Failing payment as directed, future interest would run at the rate of nine percent till recovery.