

(1984) 06 OHC CK 0010
In the Orissa High Court
Case No : Misc. Appeal No. 245 of 1981

Bhuban Chandra Dutta Gupta

APPELLANT

Vs

General Manager, Orissa State Road Transport Corporation,
Cuttack and Others

RESPONDENT

Date of Decision : 26-06-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1985) ACJ 228 : AIR 1985 Ori 19

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : S.C. Roy, for the Appellant; Susil Kumar Pattnayak, (for No. 1), Ramanatha Das, (for No. 3), B. Bramhachary, M. Patra, B. Dagara and U.S. Patnayak, (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—This appeal by the claimant is directed against the judgment dated 2nd July, 1981 of the Second Motor Accidents Claims Tribunal, Balasore (hereinafter referred to as "the Tribunal") in Misc. Case No. 79(c) of 1977 rejecting his application for compensation.

On 14-7-1977 the appellant was travelling in the bus bearing Registration No. ORB 2312 belonging to the Orissa State Road Transport Corporation (Respondent No. 1) from Bhubaneswar to Balasore. The said bus met with an accident at about 4 P.M. near Akhuapada on the National Highway when it collided with the truck bearing No. WCB 2641 belonging to Ranjit Kumar Samui (Respondent No. 2). The Oriental Fire and General Insurance Company Ltd. (Respondent No. 3) is the insurer of the truck. The appellant alleged that due to the accident he sustained a fracture on his right leg for which he was hospitalised at Balasore for two days. Thereafter, he was treated at his residence and the treatment was still continuing at the time of filing of the application for compensation. According to the appellant, the said fracture on his right leg has caused permanent disability

which has deprived him of his ability to continue his private medical practice which he was carrying on in his clinic and the medical shop situated at Balasore Town. The petitioner's monthly income was alleged to be around Rs. 900/-. The appellant claimed a total sum of Rs. 92,590/- towards medical expenses and loss of income.

2. Each of the three respondents filed a separate written statement. While admitting the accident they denied their liability to pay any compensation to the appellant. Each of them tried to put the blame on the driver of the other vehicle for the accident. They also denied the loss alleged to have been suffered by the appellant due to the accident and the quantum of claim.

On the pleading of the parties the Tribunal framed as many as four issues of which issue No. 2 was to the following effect : --

"2. Whether the petitioner sustained injuries due to rash and negligent driving of the bus ORS 2312 and the truck WCB 2641."

The appellant examined two witnesses excluding himself of whom P.W. 2 was the Doctor Bramhananda Sabat, an Orthopaedic Specialist, who treated him and P.W. 3 was Umakanta Nayak, the Compounder serving under the appellant who was also travelling with him in the ill-fated bus at the time of the accident. The Tribunal rejected the application of the appellant solely on the ground of his failure to state specifically in the application claiming compensation, if there was any rash or negligent driving by either or both of the drivers of the offending vehicles and that the injuries received by him were due to the collision between the bus and the truck. Incidentally the Tribunal also observed that the claim of compensation by the appellant could not be established by acceptable evidence.

3. Shri S. C. Ray, the learned counsel appearing for the appellant, has challenged the finding of the Tribunal regarding the maintainability of the application. He has contended that the appellant in his application for compensation unmistakably alleges that the vehicles involved in the collision were being driven in a rash and negligent manner and the accident was occasioned due to such rashness and negligence in driving of the vehicles. He has also contended that in a case for compensation arising out of an accident involving two vehicles where the accident itself was admitted, the application for compensation could not have been thrown out simply on the ground that it contains no allegation regarding negligence by the driver of the vehicle or vehicles in question.

4. Both the submissions of Shri Ray have considerable force. I have carefully perused the appellant's application for compensation and the written statements filed by the respondents. The averments in the application for compensation leave no doubt that the accident took place due to a head on collision between the two vehicles and as a result of the "said accident the appellant sustained injuries. In a case of this nature it may be difficult for a passenger to categorically state as to the driver of which of the two offending vehicles was guilty of rashness and negligence. The question of rashness and negligence is

after all a matter of inference to be drawn from the circumstances leading to the accident, the manner in which accident occurred and other relevant facts. In a case where the claimant has stated in detail the manner in which the accident took place and the opposite parties while admitting the accident have placed their case trying to absolve themselves of the responsibility, the application is not liable to be thrown out for want of a specific allegation therein about rashness and negligence of the driver. It may so happen that in a case involving collision between two vehicles recourse may be taken to the principle of *res ipsa loquitur* and then it is for the Tribunal to draw its inference regarding rashness and negligence from the materials on record. In the present case each of the respondents has categorically denied that the accident was caused due to rashness and negligence of the driver of his vehicle. In para 6 of the written statement of respondent No. 1 it is stated "The accident was caused due to gross rashness and negligence of the driver of the truck without any contribution whatsoever of the driver of the bus." Similarly, in the written statement filed on behalf of the respondent No. 2 in para 9 it is stated "That, the driver of the truck not being rash and negligent, the truck owner cannot be held responsible for paying any compensation whatsoever." Respondent No. 3 also in para 4 of his written statement has stated "That it is therefore inferred that there was rash and negligent driving by the driver of the opposite party No. 1 the insured."

From these averments it is clear that the respondents understood it quite well that in his application for compensation the appellant had alleged rashness and negligence on the part of the drivers of the two vehicles. Further, the Tribunal himself framed issue No. 2 relating to rashness and negligence on the part of the drivers. In these circumstances, it has to be held that the Tribunal was clearly in error in rejecting the application for compensation on the ground that it contained no allegation of rashness and negligence on the part of the driver of any or both the vehicles involved in the accident.

5. The manner in which the accident took place has been stated by the appellant as P.W. 1 and also the Compounder who accompanied him during the travelling examined as P.W. 3. There is no cross-examination worth the name of these witnesses. Nothing has been pointed out why their evidence should not be accepted. The report of the Inspector, Motor Vehicles which has been accepted as additional evidence in this Court by order dated 23-10-1981 gives a clear impression that the drivers of both the vehicles were at fault for careless driving. The inspector of Motor Vehicles found that at the time of his inspection the bus was standing on the left side of the road and the truck on its right side. He has observed that both the vehicles dashed each other at their left sides as a result of which left side of both the vehicles were damaged and since the right flank was completely occupied with the road repairing materials the bus could not be moved to the right flank. He has further observed that the place where the bus was standing was very narrow. The truck perhaps seeing there was space at the left side of the bus rushed away and dashed and pushed the bus whereas the driver of the bus should have been more careful and kept the bus near the road.

From this material it is inevitable that the drivers of both the vehicles in question were rash and negligent in driving their vehicles and thereby caused the accident. As such the respondents 1 and 2 as owners of the bus and the truck respectively are equally liable to compensate the appellant.

6. Coming to the question of quantum of compensation the appellant who was aged 70 at the time of filing of the application for compensation was a private medical practitioner having a clinic and medicine shop in the town of Balasore. He has claimed his monthly income to be Rs. 900/-. He has further stated that due to the fracture of his right leg he has not been able to do any practice after the accident. He has further stated that he is even not able to walk properly in spite of continuous treatment since the date of the accident. This has been substantially corroborated by P.W. 2 the Doctor who has been treating him right from the date of accident. He has also filed a certificate in support of having received Rs. 2000/- towards fees for treating the appellant. As noticed earlier there has been practically no cross-examination of the witnesses examined on behalf of the claimant. The respondent has not examined any witness. In these circumstances, there is no reason for not accepting the statements of the witnesses for the claimant. Assessing the loss of income of the appellant due to disability suffered by the accident at Rs. 350/- per month the annual loss works out at Rs. 4,200/- and having regard to the age of the appellant it would be reasonable to fix the total compensation at Rs. 20,000/-. Since an overall figure has been taken in fixing the fair compensation it is not necessary to award compensation in addition under other heads.

In view of the finding that the drivers of both the offending vehicles are responsible for the accident, the respondents 1 and 2, the owners of the vehicles driven by them would be liable to pay Rs. 10,000/- each to the appellant. The amount awarded against the respondent No. 2 shall be paid by the Insurance Company (Respondent No. 3).

7. Accordingly, the appeal is allowed, the judgment of the Tribunal is set aside. The appellant's application for compensation is accepted and a sum of Rs. 20,000/- (Twenty thousand) is awarded as compensation in his favour. Out of this amount the appellant is entitled to Rs. 10,000/- (ten thousand) from respondent No. 1 and Rs. 10,000/- (ten thousand) from respondent No. 2 and the same shall be paid by respondent No. 3. The amounts shall carry interest of Rs. 6% per annum from the date of the application. The respondents are directed to pay the compensation along with the interest within a period of three months, failing which it shall carry future interest at the rate of Rs. 12 percent per annum.