
(2007) 07 JH CK 0027
In the Jharkhand High Court

Birendra Kumar Gupta

APPELLANT

Vs

Bhushan Rajwar and Others

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Citation : (2008) 1 JCR 207

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant/claimant has preferred this appeal against the order dated 27.1.2007 passed by the Motor Vehicle Claims Tribunal, Bokaro in Title (M.V.) Suit No. 55 of 2003, whereby the compensation amount of Rs. 35,000/- was awarded to the claimant. The grievance of the appellant is confined only to the quantum of compensation awarded to him,

2. Facts of the case in brief, on the basis of which the claim for compensation was preferred before the tribunal, is that on 16.2.2007 while the claimant was going on his motorcycle towards the market, a Jeep bearing registration No. BPO 5134 being driven rashly and negligently by its driver, dashed against the motorcycle and as a result of which, claimant sustained multiple injuries including fracture of his left thigh and right wrist. He was admitted to the Bokaro General Hospital where he had obtained medical treatment. Though, he was discharged from the hospital after obtaining the medical treatment, the injuries had left him disabled since he had developed post traumatic permanent left lower limb disablement. Claiming that the accident had occurred on account of rash and negligent driving of the offending vehicle by its driver, the claimant had preferred his claim for compensation for a sum of Rs. 2,90 lakhs against the owner of the offending vehicle as also against the insurer for the pain and suffering, loss of earning for the period during his medical treatment and also for the loss of future earning due to injury sustained by him. Both the respondents namely the owner and the insurer of the offending vehicle had contested the

claim of the claimant. The tribunal proceeded to decide on the maintainability of the claim petition and had held that the claimant did suffer injury in the accident which had occurred involving the vehicle and had held that the claimant is entitled to the claim and receive compensation for the injury sustained by him. The tribunal had further held that the respondent No. 2 namely, the National Insurance Company being the insurer of the offending vehicle, was liable to pay the compensation amount. However, on the point of compensation, learned tribunal had assessed the same on the basis of the evidences on record regarding the expenses incurred by the claimant towards his medical treatment and also expenses incurred in engaging services of attendants during the period of his medical treatment and had confined the quantum of compensation to a sum of Rs. 35,000/-only. The tribunal did not award any compensation towards the loss of earnings on the ground that the claimant had not suffered any loss during the period of his medical treatment at the hospital since his employer had paid him his salary during the period of his medical leave and further, that the claimant has also not suffered any loss of future earnings since he has continued to work in the same capacity despite his disablement in the left lower limb and has in fact, got an increment of his salary during the subsequent period of his continued employment.

3. The appellant has assailed the impugned order of the tribunal in respect of quantum of compensation on the ground, that it is too meager and that the learned tribunal has grossly erred in failing to consider that the claimant had spent more than Rs. 17,000/- towards hospital charges for his medical treatment and also Rs. 7,000/- for purchase of medicines besides expenses incurred for engaging attendants during the period of his medical treatment. It is also claimed that the tribunal has failed to consider that the claimant had suffered mental and physical pain and agony as a result of the injury sustained by him and that such agony does still persist on account of the permanent disablement of his left lower limb which has disabled him from gaining his original gait and physical comfort.

4 Learned Counsel for the respondent insurance company while supporting the quantum of compensation awarded by the tribunal as fair and just, argues that the claimant has admittedly not suffered loss of earnings either during the period of his medical treatment or even post accident and, therefore, he could be entitled only to the expenses incurred for his medical treatment which, on the basis of the evidences adduced by the claimant, has rightly been assessed by the tribunal and the maximum amount of compensation which could be paid, has been awarded to the claimant.

5. From the evidences on record, it appears that the claimant had undergone treatment for the injuries suffered by him for 73 days continuously. According to the evidence adduced by him, he had incurred expense of Rs. 16,800/- towards his medical treatment and a sum of Rs. 7,000/-towards purchase of medicines, X-ray, etc. It is also undisputed that the claimant had suffered 45% post traumatic

permanent disablement of his left lower limb indicating thereby that his normal gait and comfort could not be restored.

From perusal of the impugned order of the tribunal, it appears that instead of relying upon the uncontroverted claim of the claimant regarding the amount of expenditure incurred for the medical treatment and purchase of medicines, the tribunal has relied more on conjectures by observing that the "claimant must have spent some money towards his treatment". It also appears that the tribunal has not considered at all that the claimant had suffered mental and physical pain and agony as a result of the injury sustained by him and such agony had continued not only during the 73 days of his medical treatment at the hospital, but still continues on account of his suffering 45% permanent disablement in the left lower limb. No compensation has been awarded to the claimant for the sufferings undergone by him. Even if the claimant by virtue of his profession as a teacher, has not suffered any loss of earnings, yet, he is certainly entitled to compensation for the mental and physical pain and agony suffered by him as a result of the injury and the post traumatic permanent disablement. The amount of compensation as awarded by the tribunal cannot therefore be said to be just compensation.

6. Considering the facts and circumstances of the case, a lump-sum amount of Rs. 1.00 lakh is deemed as fair and just compensation payable to the claimant not only for the expenses incurred for his medical treatment and purchase of medicines and for engaging services of the attendants, but also for the pain and suffering undergone by him on account of injuries.

7. We find merit in this appeal. Accordingly, this appeal is allowed. We hereby direct the respondent insurance company to pay a sum of Rs. 1.00 lakh to the claimant along with the interest @ 7.5% per annum from the date of application and till the date of payment. The amount of Rs. 25,000/- received by the claimant by way of interim compensation, shall however be deducted from the total amount of compensation and the remaining payable amount shall be paid to the claimant within one month from the date of this order.