
(1986) 02 OHC CK 0035
In the Orissa High Court
Case No : Misc. Appeal No. 306 of 1981

Brajakishore Swain

APPELLANT

Vs

Surendranath Behera and Another

RESPONDENT

Date of Decision : 04-02-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1986) 02 OHC CK 0035

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : P.K. Mishra, S.C. Routray, J.R. Dash and B.N. Misra, for the Appellant; P. Roy and P.C. Chakravarty, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—This is an appeal by the claimant u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") against the order of the Tribunal partially refusing his claim for Rs. 26,000/-. While determining the compensation payable to be Rs. 4,000/-, the Tribunal deducted three-fourths of the same towards contributory negligence and awarded a paltry sum of Rs. 1,000/-with 3% interest and consolidated cost of Rs. 50/-.

2. The injuries on account of the accident by the truck are not in dispute. The hospitalisation of the claimant from 17.10.1977 to 11.11.1977 is also not in dispute. The Tribunal found that the claimant is not free from blame, since he was unmindful of the coming of the truck bearing registration No. ORU 5059. Since the claimant was coming from the lane to the main road, the Tribunal put blame on the claimant. The evidence of DW 1 discloses that he did not stop the vehicle and ran away. This important factor has not been considered by the Tribunal.

3. After perusing the materials on record, I am not satisfied that the claimant-Appellant has contributed to the accident. While passing through villages nearby

even on the main road all drivers of the vehicles are required to be very careful. Differing with the Tribunal, I hold, in the peculiar circumstances of this case, that the driver of the truck was negligent in causing the accident and the claimant had not made any contribution.

4. The loss of one month's income of the claimant assessed at Rs. 500/- is just. An absentee businessman always suffers from the business falling down for some time. Besides, the physical pain, mental agony and expenses incurred for the treatment in the hospital can legitimately be inferred. Compensation of Rs. 7,500/- would be just in the circumstances of this case. Thus, the claimant is, entitled to Rs. 7,500/- towards the compensation.

5. The liability is well within the statutory limit of liability of the insurer. In the circumstances, the insurer shall pay the entire compensation amount with interest at 6% per annum from the date of application till the date of payment, if made by 31st March, 1986. In case, the payment as directed is not made within the stipulated period, the amount of compensation shall carry interest at 10% per annum from the date of application till the date of payment. Payment already made shall be adjusted.

6. A consolidated cost of Rs. 50/- has been awarded by the Tribunal. Taking into consideration the circumstances of this case, no costs should be awarded in this appeal.

7. In the result, the appeal is allowed in part. There shall be no order as to costs of this appeal.