

(1988) 03 OHC CK 0011
In the Orissa High Court

Dambaradhar Nayak

APPELLANT

Vs

Purna Chandra Swain and Another

RESPONDENT

Date of Decision : 22-03-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1988) 2 ACC 351

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

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—Claimant is the appellant in this appeal u/s 110-D of the Motor Vehicles Act, 1939 (for short "the Act") being aggrieved by refusal of his claim for compensation of Rs 25,000/- by awarding a sum of Rs. 10,000/- with 6% interest only.

2. Case of the claimant is that on 19-8-1984 at about 10.30 a.m. while he was waiting for a bus to come to Cuttack at Raghunathpur On Cuttack-Paradeep road, a car bearing registration number OAC 3793 came from Paradeep side being driven rashly and negligently and swerving towards the extreme left dashed against him as a result of which he fell down sustaining a crack fracture of the upper end of the femur of the right side. He was admitted to the Raghunathpur Primary Health Centre wherefrom he was brought to the S.G. B. Medical College Hospital, Cuttack to be under treatment as an indoor patient with effect from 20-8-84 to 2-9-84. Appellant aged about 39 years old at the time of the accident claimed to have lost a monthly income of Rs. 500/- since he is not able to perform any agricultural operation or carry on business of purchase and sale of coconut.

3. Owner and the insurer contested the claim of the appellant.

4. Appellant examined himself, a bystander who saw the accident, the person who lodged F.I.R on the basis of information and the doctor of S.G.B. Medical College Hospital.

5. On consideration of the evidence on record, the Tribunal has rightly held that the appellant has sustained the injuries on account of negligence in driving of the vehicle. The short question in dispute is whether the quantum of compensation payable to the appellant is inadequate. Except the evidence of the claimant, there is no other evidence relating to the income and loss sustained. There is also difference on the question of age. When the claimant-appellant stated to be aged 39 years the bed-head ticket relied upon by him indicates the age to be 68 years. Be that as it may, it can safely be concluded that the appellant was of an age when he was reducing in his physical ability. A person can ably carry on the agricultural operation till his 60th year. If the claimant is aged 59 years, he would be able to carry on the agricultural operations for one year more. There is no specific evidence as to how many cocoanuts were being collected by the claimant per day so that his profit can be assessed. There is no corroborative evidence that the claimant was collecting cocoanuts by moving in cycle. In such circumstances, the tribunal was justified to make a reasonable guess work regarding the income of the appellant. I see no reason to interfere with the same. Compensation awarded on that account is confirmed.

6. Tribunal has awarded a paltry sum of Rs. 1000/- towards medical expenses incurred although there is specific evidence of the claimant that he spent Rs. 1500/- on the attendants in the hospital and the compounder was taking Rs. 2/- per day for dressing the wounds for two months. Appellant is not able to walk properly and is using a stick. The doctor (PW 4) stated that the same is on account of malunion of upper end of the femur. Appellant was advised to return to the hospital after two weeks of the discharge for check up He did not come. If he would have come possibly. the defect could have been rectified.. The fact, however, remains that on account of the accident the appellant is not able to walk without a stick. For the same I am satisfied that the appellant should get some compensation towards the medical expenditure besides perpetual defect caused to the appellant. In the absence of better materials I am inclined to hold that enhancement of the compensation awarded by Rs. 2,500/- more would be just.

7. In conclusion, the appellant is entitled to Rs. 2,500/- more as compensation with interest @ 6% per annum from the date of application till the date of payment in case the payment is made within two months from today failing which the rate of interest would be at the rate of 12% per annum on the enhanced compensation of Rs. 2,500/-.

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