

**(1986) 01 OHC CK 0004**  
**In the Orissa High Court**  
**Case No : Misc. Appeal No. 36 of 1982**

Gadadhar Bhoi

APPELLANT

Vs

Loknath Panda and Another

RESPONDENT

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**Date of Decision :** 14-01-1986

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110D

**Citation :** (1986) ACJ 422

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

**Bench :** Single Bench

**Advocate :** M.K. Mallik, for the Appellant; P. Roy and P.C. Chakrabarty, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.C. Mohapatra, J.—Claimant is the Appellant in this appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). The relevant portion of the impugned order reads as follows:

...At this stage the Petitioner files a petition for time on the ground that the material witness in this case is sick including the son of the Petitioner who is also sick. Grounds not believable. The petition for time is therefore rejected. Witness No. 1 for O.P. is examined as there are no witness for the Petitioner. OPW 1 contradicts the contents of the claim petition. The evidence does not prove the claim of the Petitioner. Therefore, the Misc. Case is dismissed as not proved..

2. I am constrained to remark that the Tribunal has not assessed the evidence at all. The date of accident and the nature of injuries are not disputed. In the written statement it was stated:

...the injured boy who was carrying on a cycle (sic) suddenly fell down out of nervousness and not being able to maintain the balance in the cycle when the bus had just approached him and its engine portion had just gone ahead of the place where the injured boy fell down....

In the evidence of OPW 1 it was stated:

... While the bus was in the culvert we heard a sound and learnt that injured boy fell down from the cycle without touching the bus?

The two versions are discrepant. It should have been assessed by the Tribunal.

3. It is true that I have full scope to re-assess the materials available on record. I find that the rejection of the petition for adjournment on the ground of absence of the material witness is unreasonable since the order does not indicate any reason why the statement would not be believed.

4. Besides, I find from the Order No. 38 dated 7.8.1980 that the records in G.R. Case No. 1395 of 1977 disposed of on 15.3.1980 by Mr. P. Patra, Judicial Magistrate, First Class, were called for at the instance of the Petitioner and same were called for on 9.10.1980, as disclosed from the marginal note of the order-sheet. The entire order-sheet does not disclose that the record have been received. The Petitioner has not at any stage stated that the records would not be necessary at the enquiry. The Tribunal has also not recorded any order to that effect.

5. In the circumstance, interest of justice would be best served in case the order is set aside and the case is remitted back for fresh enquiry by the Tribunal.

6. In the result, the appeal is allowed, the order of the Tribunal is set aside and the case is remitted back to the Tribunal. Fresh date of enquiry shall be fixed by the Tribunal which shall be intimated to the parties and full opportunity shall be given to them to supply the materials?both oral and documentary?in support of their respective cases. No costs.