

(1976) 02 OHC CK 0012
In the Orissa High Court
Case No : M.A. No. 98 of 1974

Government of Orissa

APPELLANT

Vs

Narayan Patnaik

RESPONDENT

Date of Decision : 02-02-1976

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1977) ACJ 41

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : B.B. Mohanty, for the Appellant; A.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Ray, J.—The Respondent on 26. 11. 72 at about 1.00 p.m. was returning from his office on motor cycle. He was driving his motor cycle very slowly, steadily and cautiously on the left side of the road and was constantly blowing horn While so going on the road, at Goutam Nagar in Bhubaneswar near the residence of one G.N. Das the Respondent had to negotiate a turn. At the time of negotiating the turn the Government jeep belonging to the Appellant came rashly and negligently in a very high speed without blowing horn from the opposite direction and dashed against the Respondent and his motor cycle. As a result of the accident the Respondent and his motor cycle were thrown inside a drain nearby. The respondeat was seriously injured and became senseless at the spot. The motor cycle was heavily damaged. The Respondent was then carried to the hospital where he remained as an indoor patient for treatment of his injuries from 26.11.72 to 17.1.73. Even after he was discharged from the hospital his treatment continued. During treatment gangrene developed on the injuries and the big toe and the little finger of his right leg were amputated. The Respondent had to undergo severe pain and mental shock on account of the injuries sustained by him in the accident. Besides the expenses incurred during treatment in the hospital, the Respondent also incurred an expenditure to the

tune of Rs. 30,000/- after his treatment in order to provide for various precautionary measures. As a result of the accident the Respondent became partially invalid. After the accident the Respondent is no longer able to walk freely, use bicycle and motor cycle and is always in need of an attendant to enable him to carry on his normal duties. The Respondent was a good sportsman before the accident. After the accident he is no longer able to play any outdoor game, and so, has been deprived of all pleasures in his life. The length of his life has also been shortened due to the injuries sustained by him. He is not able to perform normal field work which he was required to do as an officer in the L. I. C. and consequently he has lost his future prospects of promotion and substantial portion of income.

On these allegations the Respondent filed an application u/s 110A of the Motor Vehicles Act claiming a damage of Rs. 46,000/- against the Appellant before the 2nd Motor Accident Claims Tribunal, Puri.

2. The Appellant in its objection to the claim of the Respondent alleged that the accident was due to the fault of the Respondent, and so, he was not entitled to any damage. The Appellant also challenged the quantum of damages claimed by the Respondent.

3. Tribunal, after a thorough analysis of the evidence adduced before it, has come to the conclusion that the accident occurred due to the rashness and negligence of the driver of the jeep. Upon this conclusion, according to the Tribunal, the Respondent is entitled to Rs. 3,000/- for physical pain, Rs. 2,000/- for mental shock, Rs. 1,100/- for expenditure during the period the Respondent was in the hospital, Rs. 4,000/- for future expenses, Rs. 2,000/- for loss of pleasure, Rs. 1,000/- for loss of longevity and Rs. 12,000/- for loss of future income. After deducting 1/6th from the total amount for lump sum payment to the Respondent the Tribunal has awarded Rs. 21,05/- as compensation with interest at the rate of 6 per cent per annum from the date of application till the date of realisation with consolidated cost of Rs. 400/-.

4. Learned Additional Government advocate for the Appellant does not challenge the finding of the Tribunal to the effect that the accident was caused due to the rashness and negligence on the part of the driver of the jeep. According to him, the Respondent not having been able to prove by cogent evidence that he is entitled to damages on different heads of claim as allowed by the Tribunal, the award granting Rs. 21,335/- to him cannot be sustained in law. It is urged that the Respondent being the Petitioner before the Tribunal the onus is entirely upon him to establish his claim for damages on reliable evidence. The evidence led by the Respondent, it is contended, is vague and indefinite, and upon such evidence it is not possible to calculate the amount of damage to be paid.

5. On a careful analysis of the evidence on record the argument advanced by the learned Additional Government advocate cannot be accepted. It must be borne in mind that there is bound to be some amount of guess work in estimating a

reasonable compensation for physical pain and mental shock. Therefore, the evidence on this head of claim cannot but be of a very general nature. In estimating damage on account of physical pain and mental shock regard must be had to awards made in comparable cases. The Tribunal has awarded, as has been noticed earlier, Rs. 3,000/- for physical pain and Rs. 2,000/- for mental shock. The evidence discloses that the Respondent was an indoor patient in the hospital for 52 days. During this period of his treatment several bones of his right foot were removed and at least two fingers of his left foot were amputated resulting in disfiguration of the said foot. The evidence of the Respondent which is also corroborated by the evidence of the doctor goes to show that the Respondent has been rendered partially invalid and is not able to walk freely and to use cycle and motor cycle. There was skin grafting on his left foot. He has been advised to take recourse to plastic surgery in future. The physical pain and mental shock suffered by the Respondent in these circumstances cannot be valued at less than Rs. 5,000/- as has been done by the Tribunal. Coming to the next item of claim, the Respondent has been granted Rs. 1,100/- for medical expenses incurred by him in course of his treatment in the hospital. The Respondent, originally claimed Rs. 3,000/- on this head. He has admitted in course of his evidence that he has received Rs. 327/- from the L. I. C. towards the cost of medicines. True, the medical vouchers have not been produced. The Respondent has deposed that during the period in the hospital he was maintaining an attendant with a monthly pay of Rs. 45/- besides food which cost him Rs. 100/- per month. According to him, he was having special diet in the hospital for which he was spending out of his own pocket. The Tribunal, after considering this evidence, has roughly estimated that the Respondent spent about Rs. 1,500/- during the period he was in the hospital. Deducting from this Rs. 327/- which the Respondent got from the L. I. C. towards the cost of medicines the Tribunal has arrived at the conclusion that the Respondent is entitled to Rs. 1,100/- on this head of claim. In my opinion, this estimate does not appear to be unreasonable. The Respondent claimed Rs. 8,003/- for treatment, food and medicines and for maintenance of an attendant for the future. According to his evidence, he is to spend at least Rs. 145/- per month over the attendant. The Respondent was 36 years old when he met with the accident and was to retire at the age of 58 years. So, for a period of long twenty two years he has to maintain an attendant. Taking all these into account the Tribunal has assessed compensation on this head of claim at Rs. 4,000/- which according to me is not arbitrary. Regarding the 5th item of Respondent's claim, it appears that he has claimed Rs. 3,000/- for loss of pleasure. The Respondent has deposed that he was a good sportsman and after having become invalid due to the accident he has been deprived of the pleasure he was deriving by taking part in different games. The Tribunal, after taking all these factors into consideration, has awarded Rs. 2,000/- on this head of claim which amount does not appear to be arbitrary. The Respondent claimed Rs. 2,000/- for loss of his longevity. The Tribunal has awarded Rs. 1,000/- on this head of claim. There is practically no evidence to show that on account of the injuries sustained by the Respondent in the accident his longevity has been

affected. In my opinion, therefore, the Tribunal is not justified in awarding Rs. 1000/- on this head of claim. Coming to the last head of claim, it appears that the Respondent claimed Rs. 25,000/- for loss of income throughout his life. According to him, while an employee under the L. 1. C. he was to do field work and his future prospect depended upon the volume of business he would procure for the L. I C. The Respondent deposes that on account of physical disability which has become a permanent feature with him after the accident he is not able to do any field work, and therefore, he has lost his future prospect of promotion in service. Further as he is not able to procure any business as a field officer he is to incur a loss of Rs. 3,000/-to Rs. 4,000/- per year which he was getting as incentive bonus by procuring business before the accident. The evidence on this head of claim practically goes unchallenged. The Tribunal, therefore, after careful consideration of the evidence, has awarded Rs. 12,000/-for loss of future income. In my opinion, this is a very modest estimate and does not justify any interference. In the result, therefore, the Respondent is entitled to Rs. 24,100/- instead of Rs. 25,100/-on all the heads of claim. Deducting therefrom 1/6th of the amount for lump sum payment I hold that the Respondent is entitled to Rs. 20,085/- in all.

6. Regarding the cross objection, in view of the discussion of the evidence already made above, I do not find any merit in the same.

7. For the reasons stated above the appeal is allowed in part, the awarded is modified by saying that the Respondent is only entitled to Rs. 20,035/- as compensation with interest at the rate of 6 per cent per annum from the date of application till the date of realisation with consolidated cost of Rs. 400/- and the cross-objection is dismissed.