
(1986) 07 OHC CK 0022
In the Orissa High Court

Govind Nayak

APPELLANT

Vs

Shyam Sundar Soni and Others

RESPONDENT

Date of Decision : 15-07-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1987) 1 ACC 19 : (1988) ACJ 39

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

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—Being dissatisfied with the compensation of Rs. 23,000/- awarded by the Tribunal against the claim of Rs. 40,000/- under the Motor Vehicles Act, 1939 (in short "the Act"), the injured claimant has preferred this appeal u/s 110-D of the Act.

2. Claimant was the helper of the truck bearing registration No. ORU 3697 and it is not in dispute that he was a workman. While moving in the truck on 4-5-1979 at about 9 p.m. the truck met with an accident. On account of the accident of the truck the claimant sustained injuries resulting in amputation of his right leg below the knee joint leaving a stump. Out of the claim of Rs. 40,000/-, the medical expenses incurred were said to be Rs. 5,000/-.

3. Mr. D. Satpathy, the learned Counsel for the appellant, submitted that the complete loss of earning capacity of the youngman aged 25 years who was getting monthly salary of Rs. 300/- with daily allowance of Rs. 5/- is grossly inadequate in the circumstances of this case. Mr. D.P. Parija, the learned Counsel for the owner respondent and Mr. S.S. Basu, the learned Counsel for the insurer respondent, submitted that the Tribunal has liberally awarded compensation which should not have been more than that as provided under the Workmen's Compensation Act, 1923 (hereinafter referred to as the "1923 Act").

4. On the submissions of both parties, the question for consideration is whether the Tribunal under the Act is to be guided by the rates provided under the 1923

Act to determine the just compensation.

5. u/s 110-B of the Act, the Tribunal is to determine the just compensation payable. In a decision reported in Chief Engineer Electricity-Cum-Electrical Project and Another Vs. Bhanumati Mishra and Others, ., I have held that the compensation payable under the Act should neither be punitive to the person liable nor should it be a source of profit to the claimant. The Tribunal is, thus, required to strike a balance between the two.

6. As has been held in a decision of this Court reported in General Manager, Orissa State Road Transport Corporation Vs. Maheswar Rout and Others, the quantum to be determined is to be left to the discretion of the Tribunal and the word "just" in Section 110-B has been used in a very wide and comprehensive sense. Such discretion is to be exercised judicially and there is no scope for arbitrariness. The judicial determination pre-supposes some guidelines. Mr. Basu submitted that the guideline in this case is one under the 1923 Act.

7. Elaborating the submission, Mr. S.S. Basu submitted that although the decisions of different Courts which lay down that the Tribunal can award higher compensation under the Act than available under the 1923 Act, there is no discussion in any of them giving reason why it would not be just to apply the rate as provided under the 1923 Act. Very fairly Mr. Basu brought to my notice the decision reported in 1975 A.C.J. 196 (The Orissa Co-operative Insurance Society Ltd. v. Sarat Chandra Champati and Anr. where compensation higher than that available under the 1923 Act granted by the Tribunal was upheld in appeal. In this decision also there is no discussion relating to the non-applicability of the rate as provided under the 1923 Act for determination of just compensation. Accordingly, the decision is to be confined to the facts of that case and would not have the binding effect.

8. It is no more *res Integra* that wider the power greater would be the restraint in exercise of the same. The latest decision of the Supreme Court enunciating the principle is reported in 61 (1986) C.L.T. 523 (S C.) *Niranjan Patnaik v. Sashibhusan Kar and Anr.* This principle is not confined to criminal law alone. The same is a general principle applicable to the Tribunal constituted under the Act also.

9. Award of compensation for the wrong done to a person comes within the branch of the Law of Torts. In India, the remedy was available by approaching the Civil Court. Legislature treated the workmen as a separate class and made the benevolent legislation in the 1923 Act where the procedure was made simple and easier and the employer was made liable to pay the compensation at the rate fixed in the Schedule for different categories of injuries. Keeping in view the public policy of avoidance of two forums for the same relief it was provided that the workmen approaching the convenient forum under the 1923 Act cannot approach the Civil Court also. For compensation in respect of accidents by Motor Vehicles, which comes within the branch of Law of Torts, the remedy was

available in Civil Court. As a benevolent provision, such relief was made available in proceedings before the Tribunal constituted under the Act. The Tribunal was required to determine and award the just compensation and jurisdiction of the Civil Court was excluded. Subsequently by further amendment Section 110-AA was added where it was provided that proceedings for compensation in respect of injuries to a workman in course of employment on account of accident by a Motor Vehicle cannot be initiated both before the Commissioner under the 1923 Act and before the Tribunal under the Act. Thus, the compensation for wrong done to a workman by accident of Motor Vehicle in course of his employment can be claimed either before the Tribunal under the Act or before the Commissioner under the 1923 Act.

10. Under the Act provisions have been made making an insurer liable to pay the compensation. There is no such provision in the 1923 Act. By judicial interpretation harmony has been maintained between the two Acts and it is now well settled that the Commissioner under the 1923 Act can also make the insurer liable. See *Bhajanlal Padia Vs. Bajinath " Bajnath Majhi and Others*, . Legislative intention can, thus, be gathered from the judicial interpretations that both the Statutes supplement each other and are not exclusive in their character. Object of both the Statutes is the same with a view to compensate the injured in an easier and speedier process by splitting up the categories of persons to get the relief from the general Law of Torts.

11. The 1923 Act is an existing law under our Constitution. The Parliament has not thought it wise to repeal the Schedule under the 1923 Act. When occasion arises it is being amended. Thus, representatives of the people find the compensation payable under the 1923 Act to be just compensation. Decision of the people reflected in Statutes is not to be lightly side-tracked by Courts and Tribunals. If the claimant would have approached the Commissioner under the 1923 Act, he would have received compensation as provided under the Schedule and not more. Under the Act, the Tribunal while determining the compensation is to keep in mind that the compensation awarded is not a source of profit to the claimant. Award of a sum more than what would be available under the 1923 Act would be a profit to the claimant and accordingly award of a higher compensation would have the effect of deviating from the justness of the compensation determined by the representatives of the people. The compensation determined by the Tribunal is not to be punitive to the person made liable. The owner or the insurer would have paid less amount under the 1923 Act. Fixation of higher amount as compensation under the Act has the effect of compelling the owner or insurer to pay more which has the effect of being punitive to that extent. Where the Legislature intends punitive measure it expressly states the same. If that would have been the intention of the Legislature, it would have provided for the same while adding Section 110AA to the Act.

12. On the analysis made above, there is no escape from the conclusion that by

change of forum the standard of justness in the Act and the 1923 Act cannot vary and the rate given in the Schedule to the 1923 Act would be the guideline for the Tribunal for determining the compensation to be awarded. It is not in dispute that the compensation awarded is more than the amount of compensation which the appellant was entitled under the 1923 Act. In the result, therefore, the appeal is dismissed. There shall be no order as to costs.