

(1977) 12 OHC CK 0015
In the Orissa High Court
Case No : Misc. Appeal No. 198 of 1976

Harekrushna Mohapetro

APPELLANT

Vs

Padma Charan Biswal and Another

RESPONDENT

Date of Decision : 13-12-1977

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1978) ACJ 213

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

Bench : Single Bench

Advocate : R.C. Patnaik, for the Appellant; S.S. Basu, for the Respondent

Final Decision : Allowed

Judgement

B.K. Ray, J.—On 2.10.73 the Appellant an Inspector of police, Sadar Circle, Cuttack was going on his motor cycle on the road when near Gandarpur Petrol Pump, Cuttack Sadar, a truck bearing No. ORU 3598 of Respondent No. 1 suddenly came out of the road side garage dragging another truck and while negotiating the main road without blowing horn, dashed against the Appellant who was on his motor cycle from the left side. As a result of this the Appellant and his motor cycle were thrown off the road. The Appellant fell on his right side and sustained several injuries including lacerated injuries on the head. Thereafter, Appellant was removed to the S.C.B. Medical College Hospital where he remained unconscious for 3 days. After his discharge from the hospital, he filed an application u/s 110-A of the Motor Vehicles Act for compensation for his injuries suffered by him in the accident, the total amount claimed as compensation being Rs. 50,000/-. The Tribunal after enquiry found that the accident resulting in the injuries to the Appellant was due to the negligence of the driver of the truck. On the question about the amount of compensation payable to the Appellant, the Tribunal awarded a compensation of Rs. 12,000/- and directed the insurer of the truck who is Respondent No. 2 in the appeal to pay the aforesaid sum with interest at the rate of 6 per cent per annum from the

date of application. The Tribunal also awarded to the Appellant a sum of Rs. 300/- as consolidated costs. Being aggrieved by the award of the Tribunal, the Appellant has preferred this appeal claiming higher compensation. Respondent No. 2 has also filed a cross objection objecting to the award of Rs. 12,000/- as compensation to the Appellant.

2. The finding arrived at by the Tribunal regarding the negligence of the driver of the truck cannot be assailed. On the question of quantum of compensation Mr. R.C. Patnaik, learned Counsel for the Appellant, urges that the sum of Rs. 12,000/- awarded to the Appellant is too low in view of the injuries sustained by him in the accident. According to him on account of the head injury, the Appellant sustained a permanent physical disability such as loss of memory and loss of smelling sensation. On account of loss of memory, it is argued that the Appellants efficiency in discharge of his duty as a police officer was very badly affected in consequence of which he lost prospects of promotion to higher rank in police service. The Tribunal in its award, it is said, has not taken into consideration, these

factors and once they are taken into consideration the Appellant will be entitled to much more compensation than what has been awarded to him by the Tribunal. After going through the evidence recorded by the Tribunal, I do not find that the Appellant has successfully made out a case of loss of prospects for future promotion. The evidence led by him regarding loss of memory is so scanty that no positive finding can be arrived on that basis. Regarding the Appellant's case of the loss of smelling sensation, the evidence is also not very convincing. True, there is some evidence that immediately after the accident, the Appellant temporarily lost to some extent, the power of smelling as well as of hearing. But the loss of smelling sensation and hearing power as appears from the evidence is not permanent. The evidence of Dr. Sanatan Rath, even if accepted, does not lead to the conclusion that the defects found in the Appellant in course of his examination more than one year after the accident is due to the injuries the Appellant had sustained as a result of the accident. That apart the evidence of the Appellant himself to some extent contradicts the evidence of the doctor. In spite of all these, the fact remains that as a result of the accident, the Appellant remained unconscious for about 3 days and was hospitalised for about 6 days. During this period he must have undergone severe physical pain and mental agony on account of the injuries sustained by him in the accident. It is in evidence that the Appellant for sometime after he was discharged from the hospital was unable to move without outside help and was not hearing sounds properly. These defects however disappeared as revealed from the evidence after the treatment. The Appellant joined his service after recovery and is still a serving officer of the Police Department. But taking into consideration the nature of the injuries inflicted on the Petitioner-Appellant and the facts that the Appellant remained unconscious for about 3 days, that he was hospitalised for 6 days and thereafter his discharge from the hospital he remained under medical treatment for a sufficiently long period during which he must have incurred

expenditure for his recovery, the sum of Rs. 12000/- awarded as compensation to the Petitioner appears to be too low. In another case namely Miscellaneous Appeal No. 214 of 73 and Miscellaneous Appeal No. 3 of 74 relating to one accident disposed of by this Court by one judgment, this Court awarded to the claimant in a motor accident a sum of Rs. 23,666/- as compensation. In that case the claimant was a Police Officer but the injuries inflicted on him in the accident were no doubt, more serious than the injuries inflicted on the present Appellant. Further the claimant in that case cannot be said to be a comparable one with the present one. Still then taking all the facts and circumstances of the present case into consideration, I am of the view that the compensation of Rs. 14,000/- would meet the ends of justice in the present case.

3. So far as the cross-objection is concerned, after hearing Mr. S. Basu, learned Counsel for the insurer at length, I do not find any merit therein particularly when I am of the view that the compensation awarded to the Appellant is not enough in view of the injuries inflicted on him.

4. In the result, therefore, I allow the appeal in part and modify the award passed by the Tribunal by assessing the compensation payable to the Appellant at Rs. 14,000/- and by directing the insurer to pay the said sum with interest at the rate of 6 per cent per annum from the date of application till the date of payment on the aforesaid amount within a period of three months from today in addition to Rs. 100/- towards costs of this Court. The cross-objection filed by the Respondent No. 2 is dismissed without costs.