
(1994) 04 OHC CK 0008
In the Orissa High Court
Case No : Misc. Appeal No. 79 of 1991

Khirod Kumar Mishra

APPELLANT

Vs

Ramesh Chandra Biswal and Another

RESPONDENT

Date of Decision : 26-04-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1994) ACJ 1065 : AIR 1994 Ori 244 : (1994) 1 OLR 546

Hon'ble Judges : R.K. Patra, J

Bench : Single Bench

Advocate : R.N. Mohanty, B.N. Rath, A.K. Pati and M.R. Panda, for the Appellant; N. Paikray, B.P. Mohanty, R.K. Kar, A.N. Ray, A. Nayak, S.C. Pati and A.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Whether on the facts and circumstances of the case the consolidated compensation of Rs. 15,000/- granted in favour of the appellant is the just award? --this is the just point which arises for consideration in this appeal. The appellant claims that for the injuries sustained by him on account of the accident the amount of Rs. 15,000/- is wholly inadequate whereas the respondent-insurer asserts that the amount awarded by the Tribunal is commensurate with the injuries sustained and the sufferings undergone by the appellant.

2. On 6-7-1981 the appellant while was going on his bicycle by the left flank of the road from Panikoili side towards Bhadrak, near Barikpur on the National Highway No. 5, the offending van bearing registration number O.S.C. 8509 belonging to respondent No. 1 and insured with respondent No. 2 came in a high speed without blowing any horn from back side and dashed against the bicycle of the appellant as a result of which he was thrown away from his bicycle and fell down severely injured. The appellant was removed to the Bhadrak hospital for treatment and from there he was removed to the S.C.B. Medical College and

Hospital, Cut-tack for further treatment. Alleging that the accident took place on account of rash and negligent driving of the driver of the offending van and on account of the injury, he became permanently disabled, the appellant filed an application claiming compensation of Rs. 50,000/-. The respondents contested the case by filing separate written statements denying the averments made in the claim application.

3. The claimant was examined as P.W. 2. P.W. 1 was an eye-witness to the occurrence. P.Ws. 3 and 4 are the two doctors under whom the appellant was under treatment in " S.C.B. Medical College and Hospital, Cut-tack. On the basis of the evidence, the Tribunal held that the accident took place due to the rash and negligent driving of the offending van resulting in injuries to the appellant and accordingly granted a consolidated compensation of Rs. 15,000/- with interest at the rate of 6% per annum from the date of application, i.e., 18-11-1982 till payment. The insurer-respondent No. 2 has been saddled with the entire liability.

4. At the time of accident the appellant was aged about 24 years and in the year 1980 he had passed B.A. with Honours in history and was preparing for competitive examination and Post-graduate examination. This is what appellant as P.W. 2 stated before the Tribunal which evidence remained unchallenged. He stated that he was hospitalised in the S.C.B. Medical College and Hospital for about 16/17 days during which period his brother, cousin, friends and mother attended him. He incurred expenses of about Rupees 10,000/- towards his treatment. He asserted that even by the time he was deposing before the Tribunal he was not fully cured. He stated that on account of the accident he had mental derangement and could not secure a job and he is over-aged now to enter into Government service. His evidence further indicates that he has been suffering from mental agony and at times he loses his memory and has been suffering from head reeling and chest pain. He is even unable to walk due to head reeling and is not able to come out in the sun. P.W. 3 was the Assistant Professor of Neuro Surgery department of S.C.B. Medical College and Hospital who stated in his evidence that the appellant was admitted to the surgical ward of the hospital on 6-7-1981 being referred by the Bhadrak Sub-divisional Hospital. The appellant had sustained head injury with right side acromioclavicular dislocation (of the right side) and was in an unconscious state. He was only responding to painful stimuli. Pupils were irregular and his plasters were extensive both sides. On the next day, i.e., 7-7-1981 he was transferred to Neuro Surgery Ward and he continued the treatment in the ward till 21-2-1981. P.W. 3 further stated that the appellant was referred to Orthopaedic department for his right shoulder dislocation. The appellant improved and gained consciousness at the time of his discharge. It is in the evidence of P.W. 3 that the appellant was advised to continue the drug and to attend the out-door for check up. On 19-3-1981 the appellant attended the out-door and P.W. 3 examined him on that day and he was advised medicines. It appears further from the evidence of P.W. 3 that the appellant attended the out-

door in July and August, 1988 and February, 1990. He was advised by the doctors to continue the drugs as prescribed. P.W. 3 further stated that the appellant is now developing forgetfulness and lack of concentration and memory. In the cross-examination nothing was brought out to disbelieve the evidence of P.W. 3. P.W. 4 was the Assistant Professor of Neuro Surgery department of S.C.B. Medical College and Hospital. He corroborated that the appellant was admitted to the Neuro Surgery department after being transferred from the Surgical Ward. According to P.W. 4 the appellant was unconscious at the time of examination who had sustained head injury with right shoulder injury. P.W.4's evidence further shows that the appellant was discharged on 21-7-1981. He was referred to the Orthopaedic Ward and was advised physiotherapy. At the time of discharge the appellant was advised to take pain killing drugs, vitamins and tonics. As per the advise, he attended the Neuro Surgery O.P.D. on 21-4-1981. The appellant again attended the hospital on 13-7-1988 and 10-8-1988 with complaints of headache and impaired memory. On 7-2-1990 he again came with complaints of reeling of head, headache and impaired memory and tooth ache. Subsequently on 4-4-1990 he attended the Neuro Surgery O.P.D. with complaints of reeling of head and failing memory. On 25-7-1990 and 1-8-90 he attended the O.P.D. P.W. 4 stated that he examined him on 1-8-1990. In view of the appellant's complaint of loss of memory, lack of concentration while reading and writing and reeling of head at times, P.W. 4 advised and prescribed neurotrophic drugs and vitamins. The witness further stated that the head reeling and loss of memory can be nearly taken to be a permanent disability since a period of 9 years has elapsed after the accident. This witness was not at all cross-examined. In the face of the evidence of the appellant and the doctors, it can safely be held that on account of the accident the injuries sustained by the appellant made him permanently disabled. He is a Honours graduate and is deprived of the opportunity or chance of being employed anywhere. Besides the pain and suffering that he had undoubtedly under-gone on account of the injuries sustained by him, he must have spent some amount on medicine and diet though he has not been able to produce any documentary evidence in support of the expenses incurred for purchase of medicines.

5. There is no litmus test for assessment of compensation for the injuries received in a motor accident. It is not possible to equate money with human suffering or personal deprivations, but the Court has to make a fair attempt to award damages so far as the money can compensate the loss. In awarding damages for personal injury, the compensation should be substantial in nature and it should not be a token one. The amount of damages may vary from case to case depending upon the gravity of the injury. Bodily injury is usually taken as a deprivation which entitles a claimant to damages. Loss of earnings or earning capacity, expenses to pay others for what otherwise he would do for himself and loss of diminution in full pleasures of life may be some of the consequences flowing from such deprivation. While considering deprivation, the Court should have due regard to the gravity and degree of the deprivation, duration of the

deprivation and the degree or awareness of the deprivation. Besides this, there may be Special or additional circumstances depending on the facts of a case for entitlement of extra damages. It is always open to the Court to take them into account in assessing the compensation.

6. In *H. West and Sons Ltd. v. Shephard*, 1964 Appeal Cases 326, Lord Morris opined as follows:

"Money may be awarded so that something tangible may be procured to replace of like nature which has been destroyed or lost. But the money cannot renew a physical frame that has been battered and shattered. All the Judges and Courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation....."

7. In the backdrop of the aforesaid and in view of the medical evidence in support of the appellant to the effect that he has suffered permanent disability and having regard to the appellant's academic background, his loss of earning, mental agony and medical expenses incurred for treatment, it would be fair and just to compensate him with Rs. 50,000/- as claimed by him. In order accordingly.

8. In the result, the judgment and order of the Tribunal are modified to the extent indicated above. Besides the aforesaid amount of Rs. 50,000/-, the appellant is entitled to interest thereon at the rate of 6% per annum from the date of application i.e. 18-11-1982. As the offending vehicle was insured at the time of the accident, respondent No. 2 is to indemnify the same. It is further ordered that the amount of compensation shall be paid to the appellant by the respondent No. 2 by 30th of June, 1994.

9. The appeal is accordingly allowed. No costs.