
(1990) 05 OHC CK 0038
In the Orissa High Court

Mohammad Yusuf Jamil

APPELLANT

Vs

S.K. Ishad Ahmad and Another

RESPONDENT

Date of Decision : 16-05-1990

Acts Referred:

Citation : (1991) 1 ACC 510

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Judgement

R.C. Patnaik, J.—This is an appeal by an injured who has been awarded a sum of Rs. 7500/- for the injuries sustained by him in a motor accident, from a decision of the second Motor Accident Claims Tribunal, Sambalpur, in Misc. Case No. 38 of 1986 (S).

2. On 1985, the appellant was proceeding in a jeep bearing registration number O.S.S. 2172, hired by his employer Sarfaraz Hussain, a leather merchant, to Bargarh. The vehicle was being driven rashly at a high speed. Suddenly being confronted by a tractor coming from the opposite direction, he lost his balance and failed to control the vehicle which turned turtled and fell into a wayside ditch 18 feet below the road. He sustained injuries on his right hand, right leg and head. He was removed to the V.S.S. Medical College and Hospital where he was admitted as an indoor patient. Three of his metacarpal bones of the right palm were fractured. He underwent treatment, as ill luck would have it, there was mal union. There was stiffness in the fingers and the wrist and his right palm became ultimately totally immobile and useless. He was aged 26 years and was serving under a leather merchant at a salary of Rs. 750/- per month. For the injuries sustained, loss of income deformity, disability and expenses incurred, he lodged a claim in the sum of Rs. 2, 00, 000/-. The owner of the vehicle denied the allegations. The insurer while refuting the assertions made by the appellant, pleaded breach of conditions of the policy. On the evidence led, the Tribunal held that the accident took place due to the rashness and negligence of the driver. The appellant was entitled to Rs. 7, 500/- as compensation and the insurer was

to indemnify the award.

3. Assailing the quantum of compensation as excessively low and unjust and unfair the appellant has preferred this appeal. Counsel for the appellant strenuously contended that having regard to the evidence at the appellant and the evidence of the doctor who offered his opinion looking at the papers, the paltry amount of Rs. 7, 500/- awarded as compensation was inordinately low whereas the Counsel for the insurer repelled stating that the appellant was to blame for the disability that has ultimately ensued.

4. To satisfy myself, I required the appellant to appear before me and he appeared on 30.3.1989. I saw that he was not able to move his palm. The wrist joint was partially stiff and immobile. He was not able to flex his fingers and hence could not grasp a thing. The metacarpal bones were mal-united and his right hand was almost wholly useless. That is what I noted in the order dated 30.3.1989 observing the appellant.

5. One discerns on perusal of the judgment of the Tribunal a lack of empathy which is necessary in such cases. Non-examination of Dr. Pati, Head of the Department of Surgery is not of much consequence when the head of the Department of orthopedics was examined as P.W.4. He deposed on going through the papers and the X-ray plate that there was fracture at the base of first, second and third metacarpal bones and a healed scar on the right dorsum of the hand indicated fracture on the right hand. The doctor, however, said that the stiffness could have been avoided by adequate physiotherapy and condition might improve if physiotherapy was resorted to. It may be noted that this doctor was examined two years after the accident and if any improvement result that would be very very marginal after lapse of two years. The Tribunal, however, concluded that there was no material that the appellant has "suffered a permanent disability on his right hand which restricted his movement." No certificate had been produced to show that there would be permanent or partial disability with the type of injury that the appellant sustained. He made a short shrift of the scar mark by saying that if the appellant was worried about the disfiguration of his hand, the scar mark could be removed by plastic surgery. To say the least, it is a very unkind remark. Never the appellant, an employee under a leather merchant, was very conscious about disfiguration of his right hand due to the scar mark which is nowhere his case. The doctor opined that the scar mark was indicative of the fact that the appellant had suffered a fracture and that was all. I have seen the appellant myself and observed that having regard to what has happened to his right hand, it had become practically useless for him and was rather a burden than an advantage. If the wrist was immobile, even partially, fingers would not open, he could not hold a thing, he could not take his food with his hand, he could not do many things for which hand is needed and especially the right hand. If there has been mal-union, the appellant could not blame for it. It is never speculated as to what might have happened if certain treatment had been given or the services of specialist had been utilised. That is a

hypothetical approach and never resorted to in such matters. What is considered " is the ultimate event. The appellant was not an intellectual who lived by his brain but a worker who lived by his brawn. With the loss of right hand, his uselessness as a worker is well, imaginable. He has become a liability for himself. I fail to see how a judge in such matters takes a very casual view when what is required of him is an empathetic approach with lot of consideration for the hopeless applicant.

6. The appellant was aged only 26 years and was serving under a leather merchant. He claimed that he was receiving Rs. 750/- per month. He examined his employer who corroborated him. But the Tribunal disbelieved the statement on the ground that the employer did not produce the accounts maintained to support the version and so viewing the matter, it held that the appellant was earning a minimum wage of Rs. 10/- per day. Very often I fail to understand why our Tribunals are prone to disbelieve the version of the claimants and the witnesses and fix the income at minimum wage level. The appellant claimed that he was a clerk of the leather merchant. The leather merchant himself stated that the appellant was his Munshi and was keeping accounts. Of course, his L.T.I, was taken on his deposition because he could no more write with his right hand. I fail to understand why this part of the evidence should be disbelieved. So, I hold that the appellant would be earning at least Rs. 500/- to Rs. 600/- per month under the leather merchant. The appellant must have suffered miserably and has to suffer the long way of life. His marital prospect must have dwindled, if not completely lost. He claimed to have spent Rs. 10, 000/- for treatment etc. Taking all aspects into consideration, I consider a sum of Rs. 50, 000/- would be the reasonable compensation which the appellant is entitled to and I award the same in supersession of that granted by the Tribunal with interest at the rate of 12 per cent per annum from the date of application i.e. 28.2.1980. Out of the sum realised, a sum of Rs. 60, 000/- shall be deposited in fixed deposit account for 20 years with a direction that the amount deposited is not available to be pledged, encumbered in any manner or withdrawn either wholly or in part during the period. Interest would be payable half yearly or annually according to the wishes of the appellant. The balance amount shall be paid to the appellant Unless the amount awarded as compensation together with interest is deposited with the Tribunal within two months from today, it shall carry interest at the rate of 18 per cent per annum.

7. The appeal is allowed with costs assessed at Rs. 200/-.