

(1991) 05 PAT CK 0017

In the Patna High Court

Case No : Misc. Appeal No. 82 of 1985 (R)

Mohd. Nizam Ansari

APPELLANT

Vs

Satya Narain Behani, Solo Proprietor, Anand Travellers and
Others

RESPONDENT

Date of Decision : 08-05-1991

Acts Referred:

Citation : (1991) 05 PAT CK 0017

Judgement

Bhuvaneshwar Prasad, J.—This miscellaneous appeal by the petitioner/claimant has been filed u/s 110-D of the Motor Vehicles Act, 1939 (in short "the Act"), against the judgment dated 19-7-1985 and the decree signed on 29-7-1985 by Sri Bhagwan Prasad, the Additional District Judge-Cum-Additional Motor Accident Claim Tribunal, Dhanbad (In short "the Claims Tribunal") in Title Suit No. 34 of 1976 awarding a compensation to him for a sum of Rs. 25,000 payable by respondent No. 2 (the National Insurance Co. Ltd.).

2. It appears that two suits, namely, Title Suit Nos. 18 and 24 of 1976 were heard and disposed of by the learned Tribunal on 19-7-1985 by a common judgment since the claim made in both the suits arose out of the same accident. In Title suit No. 24 of 1976, the present appellant is the petitioner/claimant. His case is that on 24-2-1976 he was employed as Khalasi in the services of Satnarain Behani, the owner of Mini Bus bearing registration No. BRO 2133 known as Anand Travellers. On the said date, the Mini Bus met with an accident near village-Pupunld on Chas, Dhanbad road. As a result of this accident, the left hand of the petitioner was completely amputated from near the shoulder joint. His four fingers of the right hand were also amputated. Besides this the petitioner also suffered other bodily injuries. He was admitted in Bokaro Hospital, Bokaro, where he remained from 24-2-1976 till 9-4-1976 and he had spent a sum of Rs. 3000 towards his treatment. At the relevant time, the petitioner was getting Rs. 350 per month. Under the aforesaid circumstances, the petitioner claimed a sum of Rs 50,000 towards compensation for the injuries suffered by him as a result of the accident.

3. Defendant No. 1 Satnarain Behani (respondent No. 1) did not appear in the suit and did not contest the same. It therefore proceeded ex parte against him.

4. So far as defendant No. 2 the National Insurance Co. (respondent No. 2) is concerned, it contested the suit by filing a written statement. It did not admit that the alleged injuries were caused to the petitioner due to rash and negligent driving of the Mini Bus in question. It further denied that the monthly income of the petitioner was Rs. 350. It further denied that the applicant had spent a sum of Rs. 3,000 for his treatment in the hospital and stated that the amount of compensation as claimed by him was excessive. It further denied that it was liable to pay any amount of compensation to the petitioner. It further denied that the vehicle in question was insured with this defendant on the relevant date of the accident.

5. The learned claims Tribunal, however, decreed the Title Suit No. 24 of 1976, in part, on contest with cost against defendant No. 2 (respondent No. 2) and ex parte without cost against defendant No. 1 (respondent No. 1). It held that the present appellant is entitled to receive a sum of Rs. 25,000 as compensation in the suit. It further held that the Insurance Co. (defendant No. 2) was liable to pay the entire compensation amount of Rs. 25,000 to the petitioner of Title Suit No. 24 of 1976. It accordingly, decreed the Title Suit No. 24 of 1976, in part, on contest with cost against defendant No. 2 and ex parte without cost against defendant No. 1. It further held that the entire decretal dues in the suit shall be reimbursed by the Insurance Co. (defendant No. 2).

6. In this appeal the appellant has contended that the judgment and the award of the learned Claims Tribunal is against the weight of evidence in so far as it relates the quantum of compensation, even when the learned claims Tribunal accepted that the monthly income to the petitioner was Rs. 350. It took an unreasonable view by calculating only Rs. 50 being the decrease in the earning capacity of the appellant. At the relevant time the appellant was working as Khalasi in the Mini Bus in question and as a result of accident he lost his left arm and four fingers of the right palm, as a result of which he is unable to perform his duties as a Khalasi. At the time of accident, the age of the appellant was 20 years, but the learned Claims Tribunal has wrongly and without any basis calculated his capacity to earn only for the next 25 years as Khalasi. Even in a Government managed Road Transport Corporation, retiring at the age of 58 years. The calculation of Rs. 50 as the decrease in the monthly income of the appellant calculated only up to the age of 25 years, is not just and proper. On account of this accident, the appellant is not able to lead, normal life or to carry on his avocation. The learned Court below however, wrongly assessed a very low amount by way of compensation to the appellant. It also wrongly refused to give any amount toward the expenses over the treatment of the appellant. On these grounds, it has been prayed that the amount awarded to the appellant may be enhanced.

7. A cross-appeal has also been filed on behalf of respondent No. 2, the National

Insurance Co. Ltd. It has contended that the impugned judgment and the decree calling upon respondent No. 2 pay a sum of Rs. 25,000 as compensation to the appellant is bad in law and wrong on facts and is fit to be set aside. The conclusion of the learned tribunal that at the relevant time the Bus in question was being driven rashly and negligently is misconceived since it is contrary to the evidence on record. The learned Claims Tribunal has completely failed to frame an issue as to whether the Mini Bus in question was insured of the alleged date of occurrence and whether respondent No. 2 was the insurer. The learned Court below has wrongly specified the onus of proof on third defendant that the Bus in question was not being driven rashly and negligently. The learned Court below also committed grave error of law in not considering the provisions of Section 95 (2) (b) (ii) (4) of the Act, according to which the liability of the Insurance Co. could not be beyond Rs. 5,000 in terms of the policy of the Insurance. The impugned award directing the payment of Rs. 25,000 to the appellant is, therefore, bad in law. The liability to pay the compensation to the appellant ought to have been fastened on the owner of the Mini Bus (respondent No. 1) who had vicarious responsibility for the negligence of his employee who was driving vehicle. The method of calculating the amount of compensation adopted by the learned court below is wrong and the liability on this respondent cannot be more than Rs. 5,000. On these grounds it was contended that the judgement and the decree passed in Title Suit No. 24 of 1976 be set aside with cost to this respondent.

8. In this appeal also respondent No. 1 did not contest. From the facts of the present case, it would be clear that the alleged occurrence had taken place on 24-2-1976. For the accident that had taken place, the learned Claims Tribunal had assessed Rs. 15,000 as the pecuniary loss and a sum of Rs. 10,000 as non-pecuniary loss to the present appellant. This appeal has been filed for the enhancement of the aforesaid amount. Before proceeding any further, I would like to state that at the relevant time on the date of the alleged accident Section 95(2) of Act run as follows:

95(2). Subject to the proviso to Sub-section (1) a policy of Insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:

(a) Where the vehicle is a goods vehicle a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b) Whether the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,--

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers,--

- (1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;
 - (2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;
 - (3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and
 - (4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab and five thousand rupees for each individual passenger in any other case;
- (c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred.
- (d) irrespective of the class of the vehicle a limit of rupees two thousand in all in respect of damage to any property of a third party....

It may be mentioned here that the provisions of this section were amended by Amendment Act 47 of 1982, according to which a sum of Rs. 15,000 for each individual passenger was fixed as the amount of compensation in place of Rs. 5,000 as will appear from the corresponding provision of the earlier section [Section 95 (2) (ii) (4)], as fixed for each individual passenger in case of a vehicle which was not a motor cab.

9. 1 will firstly refer to issue No. 3 as framed by the learned court below. According to the issue, the court proceeded to decide whether the accident in which injuries to the present appellant were caused was on account of the rash and negligent driving of the Mini Bus in question or not. This issue has been taken up for consideration in paragraph No. 8 of the judgment. The learned Counsel appearing on behalf of the appellant has submitted that he is in full agreement with the findings recorded by the learned Claims Tribunal in this paragraph, according to which the accident had taken place on account of the rash and negligent driving of the Mini Bus by the driver. In this paragraph, the learned Claims Tribunal had taken into consideration the evidence of the present appellant (P. W.1), who at the relevant time was working as a Khalasi of Bus No. BRO 2133. According to his evidence a trailer was parked towards the left side of the road at a place where the road was wide so that as many as three vehicles could have passed on it simultaneously P. W. 1 has further stated that at the relevant time the Mini Bus was being driven in a very high speed since on the said date the driver had started the Bus late and it had to reach Dhanbad Railway Station in time so as to enable the passengers to catch the Con-field Express going to Calcutta. p. W. 2 Madan Lal who was the conductor of another Bus has stated about the accident. In his cross examination, P. W. 1 had stated that at the relevant time the Bus was being driven at the speed of 70 K. M. per hour. Moreover as will appear from the facts of this case, a trailer was parked on the road on its extreme left side and place the road was wide enough to enable

three vehicles to pass together. Under this circumstance, it has been argued on behalf of the appellant that the facts of this case clearly go to establish the rash and negligent driving of the vehicle in question by the driver. Relying on the principle of *res ipsa loquitur* the appellant has contended that the circumstances resulting in the accident themselves proclaimed in cordant, clear and unambiguous voices, the negligence of the some body as a cause of the event or the accident. Hence, relying on this principle, he has submitted that the maxim of *res ipsa loquitur* will apply to the facts of the present case even if the cause of accident was unknown and no reasonable explanation as to the cause was coming from the defendant. In this connection he has placed reliance on the case of *Sayed Akbar v. The State of Karnataka* AIR 1976 SC 1848. It may be mentioned in this connection that no evidence appears to have been adduced on behalf of the defendants to show that the Mini Bus in question was not being driven rashly or negligently at the relevant time. It was under these circumstances that the learned Claims Tribunal has rightly concluded in paragraph No. 8 of the judgment that the Mini Bus was being driven rashly and negligently by its driver at the time when it dashed against the standing trailer, as a result of which the present appellant received several injuries.

10. In this connection a reference may be made to the cross appeal filed on behalf of respondent No. 2. In its ground No. II, it has been contended that the finding recorded by the learned Court below that the Mini Bus in question was being driven rashly and negligently at the time of the alleged accident is contrary to the evidence on record. In ground No. IV, it has further been contended that the learned court below had completely misdirected itself in shifting the onus of prove on the defendant that the Mini Bus in question was not being driven rashly or negligently at the relevant time and these two grounds taken in the cross appeal have, however, not been substantiated by respondent No. 2. It has vaguely been stated that the findings so recorded by the learned Claims Tribunal was contrary to the evidence on record. As stated above no witness was examined in this regard on behalf of respondent No. 2. So far as P. Ws. examined in the case on this point are concerned, I have already mentioned about their evidence which clearly goes to establish the charge of rash and negligently driving. Also the circumstance of this case go to prove the rash and negligent driving. In this connection I have also referred to the maxim of *res ipsa loquitur*. On behalf of respondent No. 2 has been submitted that the learned court below misdirected itself in shifting onus of proof on this defendant. There is no such finding in the judgment, according to which the court below had shifted the onus of proof on this defendant. It has simply observed that the defendant also did not adduce any evidence to show that the Bus in question was not being driven rashly and negligently at the relevant time. It, however, came to an independent conclusion on the basis of the evidence of P. Ws. 1 and 2 on this point and also on the basis of the facts and circumstances of this case. Hence, there does not appear to be any substance in this contention raised in ground (iv) of the cross-appeal. From these discussions, it would appear that the learned

court below has rightly concluded that at the relevant time the Bus in question was being driven rashly and negligently.

11. My attention has been drawn to Paragraph-13 of the judgment. From it, it would appear that at the relevant time the appellant was working as a Khalasi in this Mini Bus. It is not in dispute that on account of this accident the appellant had lost his left hand and also four fingers of his right hand. He had become unconscious and was removed to Bokaro General Hospital for his treatment. The accident was so ghastly that the left arm of the appellant was amputated from his shoulder and the same was fastened to the trailer. In this connection a reference may be made to the evidence of P. W. 3 Dr. K. P. Kapoor. The injury report of the appellant was proved as Exhibit-1. P. W. 3 has further stated that on the following morning the patient was operated upon by him and all the fingers of his right hand were hanging loose. The appellant had to remain in hospital for considerable time in the course of which he is said to have incurred the expenditure of Rs. 3,000. From the evidence on record, it appears that there was complete traumatic amputation of the left upper arm of the appellant from the upper 1/3rd of humerus and it also resulted in the loss of as many as four fingers of the right hand besides multiple abrasions on the knee and face of the appellant. Under these circumstances, in Paragraph-14 of the judgment the learned Claims Tribunal concluded that as a result of this accident the appellant became permanently disabled although partially, it further observed that the aforesaid accident did not make the petitioner completely unfit for any work but his left arm was lost for ever and was amputated and this disability was permanent in nature. From this it would appear that the learned Claims Tribunal was of the view that though disablement was permanent but it was not total rather it was partial. This conclusion of the learned Claims Tribunal does not appear to be correct.

12. In this connection a reference may be made to Section 92-C of the Act which relates to permanent disablement. Section 92-A (1) provides for the liability of the employer to pay compensation in certain cases on principle of no fault, where the death or permanent disablement of any person has resulted from an accident. Permanent disablement has, however, been defined in Section 92-C, according to which permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-Section (1) of Section 92-A, if such person has suffered by reason of the accident, any injury or injuries involving permanent privation of any member or joint or destruction or permanent impairing of the powers of any member or joint. In the present case, it would appear that the left arm of the appellant was severed from the shoulder joint. The appellant lost four fingers of his right hand. From this it would appear that the nature of the injuries sustained by the appellant will clearly come within the definition of "permanent disablement" within the meaning of Section 92-C of the Act. Another thing that can be noted here in this connection is that, the appellant at the relevant time was working as a Khalasi. Obviously, after this accident he lost the job since he could not act as such. After losing his left arm

and four fingers of his right hand, he was obviously not in a position to earn his livelihood by doing any manual work. It is nowhere his case that the appellant was capable of earning his livelihood by any other type of work not manual in nature. Under this circumstance, it is really surprising to note how could the learned Tribunal come to the conclusion that the disablement of the appellant was only partial. Further more it may be mentioned in this connection that the learned Tribunal could assess the decree in the earning capacity of the petitioner only at the rate of Rs. 50 per month while in normal health he was earning Rs. 350 per month. There can be no basis for any such conclusion as arrived at by the Tribunal in Paragraph-16 of the judgment, that a person who used to earn his livelihood by manual work and who lost the left arm and four fingers of the right arm thus making him incapable of performing any manual work by his hands) cannot be said to result in the decrease of his earning capacity only to the extent of Rs. 50 per month. Thus, this conclusion of the learned court below, to say the least, does not appear to be correct. As a matter of fact, the appellant lost his job of Khalasi and by the very nature of the deprivation of the limbs he was unable to earn his livelihood by any manual work which could be performed with his hands. Under this circumstance, the appellant appears to have been thrown out of the job and under no circumstance his earning capacity could be said to have decreased by less than Rs. 200 per month. Hence, I find substance in this contention of the learned Counsel for the appellant that this finding of the learned Tribunal is patently wrong.

13. Sri B. K. Dey, the learned Counsel appearing on behalf of respondent No. 2 has submitted that if the insurer is required to cover risk of the driver or Khalasi also, the insurance to this effect should have been taken. He has pointed out that for the purpose of the coverage of risk on the life of Khalasi, there should be a mentioned to this effect in the Insurance Policy. In this connection, he has drawn my attention to Col. 16 of the application for compensation filed on behalf of the appellant in Title Suit No. 24 of 1976. According to him, under this column, there is mention of the fact that the Insurance Policy had also covered the risk of Khalasi. In this connection he has relied upon the case of the National Insurance Co. Ltd., New Delhi v. Yugal Kishore AIR 1988 SC 710. Mr. Dey has pointed out that according to law it was not obligatory for the owner of the vehicle to get for it comprehensive insurance. In case, however, it is comprehensively insured the higher premium on the policy is payable to the dependent on the estimated value of the vehicle. For this purpose, a specific agreement has to be arrived at between the owner of the vehicle and the Insurance Co. and a separate premium has to be paid on the amount of the liability undertaken by the Insurance Co. in this behalf. Since according to Sri Dey, in the present case there is nothing on the record to show that the Insurance policy also covered risk on the life of Khalasi, hence the present appeal is fit to be dismissed. I, however, do not find any force in this contention of the learned Counsel. It has to be mentioned in this connection that the Insurance Policy has not been filed in this case. It must be lying with respondent No. 1 who got the vehicle insured and its

copy must be lying with respondent No. 2 along with other relevant papers to show the nature of this Insurance Policy. It is, however, surprising to note that this Insurance policy has not been filed by respondent No. 2. So far as respondent No. 1 is concerned, he has never appeared in the suit nor he is contesting the present appeal. Under this circumstance, it was all the more necessary for respondent No. 2 to file this Life Insurance Policy or its copy in order to show that it did not cover the risk on the life of Khalasi. It is not in dispute that this policy has not been proved in the suit. From the judgment of the trial court, it would appear that in the written statement filed on behalf of this respondent, it was stated that it does not admit that the vehicle in question was insured with it on the date of the accident. However, subsequently, in the course of the hearing it was conceded on behalf of this respondent that the vehicle in question was insured with it as will appear from paragraph No. 19 of the impugned judgment. Under this circumstance, it was obligatory on the part of respondent No, 2 to file the Insurance Policy in support of its contention.

14. This question was also taken up consideration in the case of National Insurance Co. Ltd., (supra), in which the learned Counsel for respondent No. 2 has placed reliance. In the said case also the Insurance Company had not filed the Insurance Policy. It was held that the Insurance Company being an instrumentality of the State, it has to act fairly and it must produce the policy for securing justice in the case. The attitude of not filing the copy of the policy of the Insurance has been described in Paragraph-10 of judgment of this case in which it has been observed as follows:

Before parting with the case we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case of not filing a copy of policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. The Supreme Court has consistently emphasised that it is the duty of the party which is in possession of a document, which would be helpful in doing justice in cause, to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case the instrumentalities of the State such as the appellant Insurance Company who are under an obligation to act fairly

We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence.

In face of this decision respondent No. 2 cannot be allowed to take advantage of its failure to file a copy of the Insurance Policy and as such. I do not find any force in this contention of the learned Counsel for respondent. Relying on this decision it has been held in the case of O. F and G. I Company Ltd. v. B. K. Pandey 1989 BLJR 230, that in a case in which the insurer did not bring the

insurance policy on the record it was estopped and precluded from raising the defence that its liability was limited to the statutory liability in terms of Section 95(2)(b) of the Act. In the said case the appellant who was the Insurance Company did not produce the policy of the insurance. It was held that it was the bounden duty of the Insurer and/or the owner of the vehicle who were in possession of the said policy to produce the same before the Tribunal. It was also held in this decision that under provision of Section 96(4) of the Act the excess payment cannot be recovered from the owner.

15. In this connection it has been pointed out that according to decision of this court in the case of National Insurance Co. Ltd. Vs. Chhunnu Ram and Another, the amount of compensation of in excess held of Rs. 5,000 in terms of Section 92(2) (b) (ii) (4) was to be valid. It has, however, been pointed put by Sri Dey, the learned Counsel appearing on behalf of the respondent that against this decision S. L. A. No. 13878 of 1983 is pending before the Hon'ble Supreme Court in which special leave has been granted. However, under the facts and circumstances of this case, it has to be seen whether the case of the appellant is covered by the above mentioned provision of law, or not.

16. According to the case of the appellant, at the relevent time he was acting as a Khalasi in the ill-fated Mini Bus. From this it would appear that he was not the travelling on this Bus as a passenger carried for hire or reward. It has accordingly been submitted that properly speaking his case would be covered by Section 95(2) (1) (b) (i) of the Act, according to which a limit of Rs. 50,000 in all was fixed by way of compensation in respect to the person other than the passengers carried for hire or reward. From the evidence on record, it appears to have been well established that at the relevant time the appellant was acting as a Khalasi. According, he has claimed. that he is entitled to get Rs. 50,000 by way of compensation. In this connection a reference may be made to the cross appeal filed on behalf of respondent No. 2 in which a stand has been taken that the case is covered by Section 95(2) (ii) (4) of the Act, according to which a sum of Rs. 5,000 is payable for each individual passenger travelling by the Bus. Accordingly, in the cross appeal it has been made out that the liability of respondent No. 2 should be limited only to this extent. However, under the facts and circumstances of this case, it appears to be well established that the appellant was acting as a Khalasi in the Mini Bus at the time when met an accident. Hence, he cannot be said to be a passenger on the Bus carried for hire or reward. Hence I do not find any merit in this contention raised in the cross-appeal So far as the contention with respect to the Mini Bus in question being driven rashly or negligently or not at the time of the alleged accident, I have already dealt with this aspect of the matter in the earlier part of the judgment. I have also held that the learned tribunal has not really shifted onus of proof on this respondent that the Mini Bus in question was being driven rashly and negligently. Hence, I do not find any merit in this cross appeal.

17. So far as amount of compensation is concerned, from the judgment of the

learned tribunal it would appear that a sum of Rs. 15,000 has been allowed for the pecuniary loss and a sum Rs. 10,000 has been allowed for the non-pecuniary loss. This appeal has been filed for the enhancement of the awarded amount. It has come in evidence that the appellant has lost his left arm from the shoulder joint and had also lost four fingers of his right hand. The learned tribunal has however held that the appellant was permanently disabled, although partially. I have already rejected this finding of the learned Tribunal since according to Section 92-C of the Act the injuries sustained by the appellant would amount to permanent disablement. So far as the pecuniary loss is concerned, it was also the learned Tribunal has wrongly assessed is at Rs. 15,000 since according to it the earning capacity of the appellant was reduced only to a sum of Rs. 50 per month which would come to Rs 600 per year. The age of the appellant at the time of the accident was 20 years but the learned Tribunal has held that he could work as a Khalasi for at least 25 years more. Accordingly, it held that a sum of Rs. 15,000 would be the amount suffered by the appellant as the pecuniary loss. As stated above this finding of the learned Tribunal appears to be wrong. I have already concluded that the minimum decrease in the earning capacity of the appellant would be Rs. 200 per month and Rs. 2,400 per year. But for this accident the appellant could have easily continued in the service till the age of 55 years. At the time of this accident he was aged about 20 years. This would mean that he could have continued in active service for a period of 35 years as a Khalasi. From this it would appear that his pecuniary loss would come to a sum of Rs. 84,000 and not Rs. 15,000 as held by the learned Tribunal. As noticed above, the liability of the Insurance Company would only be to the extent of Rs. 50,000. Therefore, the balance amount has to be paid by respondent No. 1.

18. From the judgment of the learned Tribunal it appears that no interest was awarded to the appellant. In this connection a reference may be made to Section 110-CC of the Act, according to which, where any court or Claims Tribunal allowed a claim for compensation made under this Act it may direct that in addition of the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making claim as it may specify in this behalf. In the case of Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, , it has been held by the Hon'ble Supreme Court that while enhancing the amount of compensation the High Court should award interest thereon from the date of application for compensation. It was further held that the High Court should exercise the discretion in awarding interest under this section judicially having regard to the facts and circumstances of the particular case. In the said case, the learned single Judge and the Division Bench of the High Court had awarded interest only at the rate of 6% per annum on enhanced compensation amount from the dates of their respective judgments. It was held that the interest at the rate of 12% per annum from the date of claims application should have been ordered. In view of this authoritative decision of the Hon'ble Supreme Court, there is no alternative but to hold that the appellant is entitled to interest at the rate of 12% per annum from the date

when he filed his claim before the Tribunal. In the case of *Ramesh Chandra v. Randhir Singh* 1990(3) SCC 723, it has been held by the Hon'ble Supreme Court that the interest can be awarded even if no specific pleading or claim was made in this regard. It was further held that the grant of any interest is not dependent on any pleading in that regard.

19. So far as the non-pecuniary loss is concerned, the learned Tribunal has awarded a sum of Rs. 10,000 on this account as will appear from paragraph-17 of the impugned judgment. In this very paragraph it has observed that the extent of pain and mental agony suffered by the petitioner as a result of the aforesaid injuries can better be imagined than described. It has further held that although money can not renew a shattered frame of a human being still damages have got to be granted under the head pain and sufferings to the petitioner and in fixing such damages nothing more can be done than to endeavour to arrive at a fair estimate taking into account all the relevant considerations. It was under these circumstances that the learned Tribunal has fixed a sum of Rs. 10,000 as compensation for the nonpecuniary loss. On behalf of the appellant it has seriously been contended that he was deprived of left hand and four fingers of his right hand at the very prime of his youth at a time when he was aged only 20 years. This has naturally deprived him of the pleasures of life and has put him under the various sufferings and pain on this account. Under these circumstances, it has been contended that the higher amount of compensation by way of non pecuniary loss should be granted.

20. In the case of *Ramesh Chandra (supra)* which was case under Motor Vehicles Act, 1988 whose Section 168(1) corresponds to Section 110-B of the Motor Vehicles Act, 1939, it has been held as follows:

the pain and suffering and loss of enjoyment of life is a resultant and permanent fact occasioned by the nature of injuries received by the claimant and the ordeal he had to undergo. Grant of compensation (Rs. 20,000 in this case) under this head represents the money solace, which is found under Law of Torts. This, on the face of it is a distinct head, quite apart from the inability to earn livelihood on the basis of incapacity or disability. The incapacity or disability to earn a livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into account deprivation of earnings of a conceivable period. This head being totally different cannot overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life.

Under these circumstances. I hold that a sum of Rs. 20,000 should be awarded to the appellant by way of non-pecuniary loss.

21. It appears that the appellant has claimed a sum of Rs. 3,000 towards his medical expenses. From paragraph No. 15 of the judgment of the Claims Tribunal it would appear that this claim of the appellant was rejected by it on the ground that no evidence either oral or documentary was adduced by the petitioner (appellant) in support of this fact in the court, though there was evidence on

record to show that the petitioner was admitted in Bokaro General Hospital for treatment where he remained from 24-2-1976 to 9-4-1976. The learned Court below, however, held that there was absolutely no evidence on record to show that the petitioner had to spent anything towards his treatment and it is not known whether he himself met the cost of his treatment or that it was borne by somebody else. Accordingly it rejected the claim of Rs. 3,000 towards the medical expenses. There is no denying the fact that the appellant was hospitalised in precarious condition on 24-2-1979 where he continued till 9-4-1976. Thus roughly for one and half months he was in the hospital. There is nothing on the record to show that his medical expenses were borne by anybody else. In absence of such thing it has to be concluded that it was the appellant who had spent on this account. Hence, the reasons given in this paragraph of this judgment disallowing the claim of Rs. 3000 towards madical expenses do not appear to be correct. No doubt, the appellant should have given better particulars of the expenses. Being himself a Khalasi and having been admitted in the hospital in a precarious condition, it could not have been expected of him to maintain maticulous account of expenditure towards his medical bills. Under this circumstances, I hold that the claim of Rs. 3,000 towards the medical expenses would be justified.

22. On behalf of respondent, it has contended that the present appellant should have claimed compensation in terms of Workmen's Compensation Act, 1923. A perusal of Section 110-A will go to show that notwithstanding anything contained in Workmen's Compensation Act, 1923, where the bodily injury to any person gives rise to claim for compensation under the Motor Vehicles Act, 1939 and also in the Workmen's Compensation Act, 1923 a person entitled to a compensation, may claim compensation either under these two Act but not under both. Under this circumstance, it would appear that there is no bar to the present appellant for claining compensation under this Act.

23. From the detailed discussions made above, it becomes that this appeal is fit to be allowed and the cross-appeal filed on behalf of respondent No. 2 is liable to be dismissed.

In the result, the appeal is allowed on contest with cost against respondent No. 2 and ex parte without cost against respondent No. 1 in the manner indicated above. The appellant shall be entitled to receive the various payments along with interest in the manner indicated above. The liability of respondent No. 2, however, would be only to the extent of Rs, 50,000 as provided under the Act and the balance amount will have to be paid by respondent No. 1. The judgment and the award of the learned Claims Tribunal is so for as modified accordingly and this appeal is allowed to this extent.