

(1993) 02 OHC CK 0034
In the Orissa High Court

Mulla Md. Abdul Wahid

APPELLANT

Vs

Abdul Rahim and Another

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1993) 2 ACC 623 : (1993) 76 CLT 605

Hon'ble Judges : G.B. Pattnaik, J

Bench : Single Bench

Judgement

J.B. Pattnaik, J.—This appeal is against the decision of the Second Motor Accidents Claims Tribunal and claimant is the appellant.

2. The short question that arises for consideration in this appeal is whether the Tribunal has jurisdiction to award compensation more than the amount claimed by the claimant. The answer to the aforesaid question depends upon a true and correct interpretation of the provisions of Section 110-B of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act").

3. The case of the claimant is that he was going in the bus bearing registration number ORB-2520 as its Conductor on 27.2.1980. The said vehicle went off the road and capsized at village Sarang near Soro at about 11.20 a.m. On account of such accident the left leg and the hand of the claimant got fractured and the accident occurred on account of rash and negligent driving of the driver of the vehicle. The claimant was then shifted to the hospital at Bhadrak and from there he was shifted to the S.C.B. Medical College Hospital, Cuttack, but the incapacity of the claimant remained and there is no prospect of any future earning. He was 24 years old at the time of accident and was getting Rs. 500/- per month at his wage. He claimed Rs. 40,000/- as compensation.

4. The owner of the vehicle in his written statement admitted about the accident, but took the stand that there was no rashness or negligence on the part of the driver in driving the vehicle. According to him, a vehicle was coming from the

opposite direction with great speed and in order to avoid running over a cyclist, the said vehicle suddenly moved to its right. The driver of the vehicle which was carrying the claimant to avoid being hit by the vehicle coming from the front took his vehicle to the left not knowing that the soil was loose and on that score the vehicle capsized and the accident occurred.

The Insurer also filed a written statement denying the allegations of negligence on the part of the driver of the vehicle of which the claimant was going as Conductor.

5. The Tribunal framed 5 issues and on discussion of materials before it came to the conclusion that the accident occurred on account of the rash and negligent driving of the vehicle by its driver. The Tribunal further found that the claimant is entitled to get a sum of Rs. 3,500/- towards medical expenses and Rs. 1,500/- for future nursing and attendance. So far as pain and suffering and loss of amenities are concerned, the Tribunal found him to be entitled to an amount of Rs. 15,000/-. So far as future earning is concerned, the Tribunal came to hold that the total loss would be Rs. 1,20,000/- and by deducting thirty per cent on lump sum amount being paid, it would stand around Rs. 80,000/-. But since the claimant had claimed only Rs. 40,000/-, the Tribunal awarded compensation to the tune of Rs. 40,000/- and, therefore, the claimant has preferred this appeal.

6. Mr. Jena appearing for the appellant contends that u/s 110-B of the Act, the Tribunal is required to hold an enquiry and may make an award determining the amount of compensation which appears to it to be just and, therefore, the power of the Tribunal is not restricted by the amount of claim made in the claim petition and consequently, the Tribunal having determined the compensation in the present case to the tune of Rs. 80,000/- erred in law in restricting the amount to a sum of Rs. 40,000/- merely because the claimant had claimed Rs 40,000/- in the claim petition. In support of the aforesaid contention, reliance has been placed on a Bench decision of the Bombay High Court in the Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others, a decision of the Kerala High Court in the case of Mohammed Koya Vs. Balan, , a decision of the Orissa High Court in the case of Balavadra Patra and Another Vs. Chief Engineer and Others, and Anr. decision of the Bombay High Court in the case of Ramu Tolaram and etc., etc. Vs. Amichand Hansraj Gupta and Others, . The aforesaid question requires a careful examination of the provisions of the Motor Vehicles Act and the decisions relied upon by the learned Counsel for the appellant.

7. u/s 110-B of the Act, the Tribunal has the duty to determine the amount of compensation which appears to it to be just The expression "just compensation" would obviously mean what is fair, moderate and reasonable and awardable in the proved circumstances of a particular case. An award made u/s 110-B of the Act determines the amount of compensation which appears to the Tribunal to be just, specifies the person to whom the compensation is to be paid and specifies the amount which shall be paid by the Insurer or owner or driver of the vehicle

involved in the accident or by all or any of them, as the case may be. The expression "which appears to it to be just" in Section 110-B vests a wide discretion in the Tribunal in the matter of determination of compensation. But all the same, the determination cannot be arbitrary and must be based on certain data establishing reasonable nexus between the loss incurred and the compensation to be awarded. When the compensation awarded under the Act is required to be just, it would mean the amount which would be appropriate or proper. In other words, it signifies that the compensation amount should be so assessed as to make provision for the legal representatives to receive or earn such pecuniary benefits as they could have obtained from the deceased, if he had lived his normal life. In a case of injury, it has to be assessed depending upon the loss of earning of the injured and how much the injured would need for his normal living. If the provisions of Sections 110-A to 110-F are examined, it appears that nowhere the statute requires that the amount of claim should be mentioned. But u/s 110-A(2) an application is required to be made to the Claims Tribunal in such particulars as may be prescribed.

8. Whether, a Tribunal can grant an award in excess of the amount claimed came up for consideration before the Division Bench of the Bombay High Court in *Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others*, Relying upon the earlier Division Bench decision of the said Court in the case of *Sharifunnisa and Ors. v. Basappa Ramchandra Dale and Ors.* 1986 ACJ 792 the learned Judges held that the Tribunal would be justified in proper cases in awarding compensation in excess of the amount that is claimed in the original application. A learned Judge of Delhi High Court in the case of *Kola Devi and Anr. v. Ram Chand and Ors.* 1986 ACJ 818 allowed compensation more than what was claimed in the claim application on the ground that subsequent to the claim application, the scale of pay has been enhanced and the deceased would have been benefited by the same. Their Lordships of the Supreme Court in the case of *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, held that the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture, and if this is so, then it will be unreasonable to expect the party to state precisely the amount of damages or compensation that it would be entitled to. Consequently, it would be for the Tribunal equipped with the expertise in deciding such cases to estimate properly the compensation that a claimant would be entitled to in appropriate cases. The two other decisions, one of Kerala High Court in *Mohammed Koya Vs. Balan*, and the other of Orissa High Court in *Balavadra Patra and Another Vs. Chief Engineer and Others*, relied upon by the appellant are cases on Workmen's Compensation Act where compensation is fixed statutorily and, therefore, the Courts have held that principles of waiver have no application. But the aforesaid decisions will be of no assistance in deciding the question whether the Tribunal under the Motor Vehicles Act can award compensation more than the amount claimed. No contrary decision has been cited before me by the learned Counsel appearing for the

Insurer-respondent No. 2 limiting the power of the Tribunal to the amount claimed in the claim petition. In the aforesaid premises, I am persuaded to agree with the views expressed by the Division Bench of the Bombay High Court in *Municipal Corporation of Greater Bombay and Another Vs. Kisan Gangaram Hire and Others*, and held that there are no fetters on the power of the Tribunal to award compensation in excess of the amount which is claimed in the application. Consequently, the Tribunal having determined the compensation to the tune of Rs. 80,000/- erred in law in restricting the amount to Rs. 40,000/- on the ground that the claimant had made a claim only to the tune of Rs. 40,000/-.

9. Mr. Roy appearing for the Insurer contends that even if the award is enhanced, but the Insurer would be liable only to the extent its liability is fixed under the Workmen's Compensation Act since the claimant was governed by the provisions of the said Act. Without entering into the said controversy, I am remitting the matter to the Tribunal for re-determination in the light of the observations made by their Lordships of the Bombay High Court in *Municipal Corporation's* case (referred to *supra*). I would accordingly set aside the award of the Tribunal and remit the matter to it for re-determination of the award after giving an opportunity of hearing to both parties concerned. I would make it clear that it would be open for the Tribunal to permit the claimant to amend the claim petition enhancing the claim as was done in the Bombay case and the Tribunal may thereafter proceed in accordance with law.

This appeal is accordingly allowed with the aforesaid direction and observation. Parties are directed to appear before the Tribunal on 1.3.1993.