

(2007) 07 JH CK 0018
In the Jharkhand High Court

Naresh Kumar Gupta

APPELLANT

Vs

Sunita Kumari and Another

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Citation : (2007) 4 JCR 566

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Judgement

1. The main issue raised in this appeal, which has been preferred against the judgment and Award dated 6.1.2007 passed in Claim Case No. 80 of 2004 by the Additional Claim Tribunal,

2. Hazaribagh, is in respect of the quantum of compensation awarded by the tribunal to the appellant/claimant with regard to the alleged injury sustained by the appellant and the alleged disablement suffered by him as a result of the alleged road accident. 2. Facts of the case in brief is that on 10.4.2004 the appellant along with his wife Sunayana Devi was travelling on a Jeep bearing registration No. JH 02B 5905 on their return home. On account of the alleged rash and negligent driving of the vehicle by its driver, the vehicle dashed against the road side tree resulting in severe injuries to all the passengers of the vehicle including the appellant and his wife. Both of them were removed to the nearest hospital where they were provided first aid and thereafter, they were admitted to the local nursing home for proper medical treatment.

3. The appellant has claimed to have suffered multiple grievous injuries in the nature of fracture of 10th ribs and for the treatment, he was admitted to the nursing home for 10 days and ought to spend about Rs. 30,000/- for his medical treatment. He has further claimed that he being a vegetable vendor and was earning on an average of Rs. 4,000/- per month, had suffered loss of earnings during the period of his medical treatment and had also suffered 25% partial disablement on account of the injury which has caused him mental and physical pain and agony. A sum of Rs. 3.00 lakhs was claimed by him towards

compensation, both from the owner of the offending vehicle (respondent No. 1) as well as from the insurer of the vehicle namely, the New India Assurance Company Ltd. (respondent No. 2).

4. Both the respondents had contested the claim of the claimant. The owner (respondent No. 1) has denied her liability to pay any compensation on the ground that the vehicle was covered under the policy of the New India Assurance Company Ltd. and the driver possesses a valid driving licence for driving the vehicle and she having not committed any breach of conditions of the contract of insurance, it is entirely upon the insurer to pay the liability.

5. On the other hand, the insurance company (respondent No. 2) has denied the claim of the claimant on several grounds including the maintainability of the claim, as advanced by the claimant. The insurance company has however, acknowledged the fact that the offending vehicle was covered under the policy of insurance on the date of the alleged accident.

6. On the basis of the rival pleadings, the tribunal framed several issues relating to the maintainability of the claim and also on the "liability of the respondents to pay compensation besides the issue relating to quantum of compensation. After considering the evidences on record, the tribunal had recorded its finding that the accident had occurred in the manner narrated by the claimant and that the vehicle bearing registration No. JH 02B 5905 belongs to the respondent No. 1, was involved in the accident which had occurred on account of rash and negligent driving of the vehicle by its driver. The tribunal had further recorded its finding that since the offending vehicle was covered under the valid policy of insurance under the respondent No. 2 on the date of accident, the insurer was liable to pay the compensation to the claimant. On the issue of quantum of compensation, the tribunal had taken into account several documents produced by the claimant, which includes vouchers in respect of purchase of medicines and medical certificate issued by the nursing home where the claimant was admitted for treatment of his injuries and also certificate issued by the medical board which had declared that the claimant had suffered grievous injury resulting in 25% disability. While awarding compensation under the head of physical disability to the extent of Rs. 25,000/-, the tribunal had assessed the loss of earnings for the period of 10 days which the claimant had suffered during the period of his treatment, at Rs. 1,000/-. A sum of Rs. 1,000/- was assessed as expenses incurred for the purchase of medicines and a sum of Rs. 10,600/- was assessed, on the basis of the medical certificate, as the nursing home charges. Thus, the total amount of Rs. 37,600/- was awarded as payable compensation to the claimant.

7. The appellant has assailed the finding of the tribunal on the quantum of compensation on the ground that the amount is clearly disproportionate to the injury and the degree of disablement suffered by the claimant and that the tribunal has erred in failing to consider that the claimant had suffered mental and physical pain and agony on account of the injuries sustained by him and

continues to suffer such agony on account of physical disablement due to which, he is not able to carry out his normal work. The impugned Award has also been assailed on the ground that the tribunal has not assessed the loss of earnings properly, although the claimant has stated that his monthly earning was Rs. 4,000/-.

8. Per contra, contesting respondent No. 2 would argue that in absence of sufficient evidence that the claimant has suffered any permanent disability or loss of future earnings and in absence of evidence to confirm the actual amount of monthly income of the claimant, the amount awarded by the tribunal is just and proper.

9. It appears from the record that ugh, the appellant has claimed that his earning as vegetable vendor is Rs. 4,000/-per month, but he has not adduced any evidence in support of such claim. Yet. the tribunal has considered reasonably the loss of earnings at Rs. 100/- per day and has thus assessed the earning for the period of 10 days during which the claimant was admitted to the nursing home, at Rs. 1,000/-. The tribunal has also taken into consideration the vouchers produced by the claimant in respect of the medicines purchased by him and also receipts showing payment of Rs. 10,600/- towards nursing home charges and medical treatment and has fairly conceded that the aforesaid amounts was incurred by the appellant towards his medical treatment. As regards the evidence of 25% disablement, the certificate of the medical board read with the evidence of the doctor who had examined and treated the claimant at the nursing home, indicates that the claimant had suffered grievous hurt on account of fracture of his ribs, but it does not indicate the nature of disability. The claimant has also not stated categorically as to whether on account of purported disability, he is unable to carry out his daily chores and pursue his avocation. Under such circumstances, amount of Rs. 25,000/- under the head of partial disablement, as awarded by the tribunal, is deemed just and proper.

10. It however appears that the tribunal has though recorded its finding that the claimant has suffered serious injuries and had to undergo treatment as indoor patient for about 10 days, yet the tribunal has not taken into account the fact that the claimant had suffered mental and physical pain and agony on account of the injuries sustained by him and no compensation was awarded to the claimant on this head. The claimant is certainly entitled to compensation for having suffered mental and physical pain and agony as a result of the injury caused to him.

11. Accordingly, we award a further sum "of Rs. 10,000/- to the claimant towards his mental and physical pain and agony. This amount shall be in addition to the amount awarded by the tribunal by way of compensation. The respondent No. 2 namely, the New India Insurance Company is directed to pay a total amount of Rs. 47,600/- as compensation, which includes the amount enhanced hereby, to the claimant along with interest at the rate stipulated by the tribunal and to be deposited in the manner as directed by the tribunal.