
(2004) 06 OHC CK 0004
In the Orissa High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Prafulla Kumar Mohanty and Others		RESPONDENT

Date of Decision : 24-06-2004

Acts Referred:

Citation : (2005) 4 ACC 166 : (2004) 2 OLR 599

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—This Letters Patent Appeal has been filed by the appellant Insurance Company inter alia challenging the judgment dated 11 th July, 2001 passed by a learned Single Judge of this Court in Miscellaneous Appeal No. 430 of 1996.

2. Respondent No. 1 Prafulla Kumar Mohanty, Senior Clerk of the District Judge's Court at Berhampur, while travelling in a car bearing registration number AAS 4005 with his family from Puri to his village on 28th April, 1990, the car met with an accident at about 8 a.m. near village Palia, Chatrapur on NH-V. Consequent thereof, there was dislocation of the hip joint and right tibia of respondent No. 1. He filed a claim case before the 2nd Motor Accident Claims Tribunal, Berhampur for compensation of a tune of Rs. 4,98,782.62. The said claim case was registered as M.A.C. No. 13 of 1991 (451/90). The Tribunal after a vivid discussion of the evidence, both oral and documentary, awarded compensation in favour of respondent No. 1 under different heads as mentioned below:

(i) Injuries Rs. 40,000/- (ii) Loss of income Rs. 6,000/- (iii) Mental agony Rs. 10,000/- (iv) Future disability Rs. 20,000/- and (v) Medical expenses Rs. 10,000/- ----- Total Rs. 86,000/-

Being aggrieved by the said award the claimant-respondent No. 1 approached this Court in Miscellaneous Appeal No. 430 of 1996.

3. The learned Single Judge, after hearing both sides, disagreeing with the quantum of compensation awarded by the Tribunal, awarded a sum of Rs.

2,00,000/- as compensation for the injuries caused to respondent No. 1 due to the accident. So far as award of compensation on the head of medical expenses, the learned Single Judge enhanced the same to Rs. 15,000/- from Rs. 10,000/-. The amounts awarded as compensation on the heads of loss of income and mental agony, i.e., Rs. 6,000/- and Rs. 10,000/- respectively were, however, confirmed. Thus, in toto this Court awarded a sum of Rs. 2,31,000/- as compensation and directed for payment of interest thereon at the rate of 9% per annum, from the date of the claim. The said judgment of the learned Single Judge is impugned.

4. Though we are aware of the legal proposition that the Insurance Company is precluded from challenging the quantum of award, in view of the fact that the award has been enhanced to Rs. 2,31,000/- from Rs. 86,000/- we feel it just and proper to scrutinize the evidence, both oral and documentary, once again in the light of the decision of the Supreme Court in the case of Nagappa Mahadev Doddaamani Vs. New India Assurance Co. Ltd. and Another,

5. Admittedly, the claimant was working as a Senior Clerk. Due to the accident he suffered from stiff knee. The medical evidence coupled with other evidence clearly reveals that the claimant is able to walk and do his normal duties. He does not require the assistance of any person while riding a cycle, or walking, or going up the steps. After being discharged from hospital he continued to work as the Bench Clerk of a Court at Berhampur for some time and then opted for voluntary pension. Thereafter, he got himself enrolled as an Advocate and started practising in different Courts. The Tribunal also took judicial notice of the fact that the claimant was coming to Court in connection with his case. The Counsel for the claimant who was examined as PW 6 also admitted the said fact. The claimant, in order to substantiate his allegation as to disability, examined a private doctor as PW 4. The Tribunal, however, disbelieved the said doctor on the ground that the claimant was treated as an indoor patient at the M.K.C.G. Medical College Hospital and there was no reason as to why he would prefer to go to a private doctor.

6. Be that as it may, fact remains, the claimant had joined his service, worked as a Bench Clerk from 1st September, 1990 to 1st November, 1991, was able to walk, go up the steps and ride his cycle without the assistance of any person, and added to that, after opting for invalid pension he got himself enrolled as an Advocate and started practising in different Courts. The job of a Bench Clerk of a Court is a sitting job. At the other hand the job of an Advocate is more strenuous as an Advocate has to frequently move from Court to Court. The claimant chose latter to the earlier. Thus, it cannot be said that the claimant became totally invalid and was disabled to such an extent that it was impossible for him to earn his livelihood. As Bench Clerk of a Court admittedly he was receiving a salary of Rs. 2,160/- per month. But then no evidence has been adduced with regard to his income as an Advocate. Judicial notice can also be taken that being an employee of a District Court and that too as a Bench Clerk the claimant had a

better advantage to earn as an Advocate. Over and above his earning as an Advocate the claimant also received invalid pension and other pensionary dues. These aspects were not kept in mind by the learned Single Judge.

7. After considering all the materials available, we feel that the award of Rs. 2,00,000/- by the learned Single Judge as compensation for injuries is too high. According to us compensation on that head should be Rs. 1,30,000/-. But then the learned Single Judge enhanced the medical expenses to Rs. 15,000/- from Rs. 10,000/-. We do not find any reason to interfere with the same. The amounts of compensation awarded by the teamed Single Judge on the heads of loss of income and mental agony are also maintained.

8. In the result, we direct that the claimant-respondent No. 1 shall be paid a compensation of Rs. 1,65,000/- with interest thereon at the rate of 9% per annum from the date of the claim. It is submitted by the learned Counsel for the claimant-respondent No. 1 that a sum of Rs. 1,30,124/- has already been paid to the claimant-respondent No. 1 on 18th July, 1996. It is further submitted that in consonance with the order of this Court, an amount of Rs. 3,14,106/- has been lying in deposit in Bank. We, therefore, direct that the amount payable to claimant-respondent No. 1 as compensation as per our aforesaid direction be calculated and deducting the amount already paid to the claimant-respondent No. 1, the balance amount due to him be paid out of the amount lying in Fixed Deposit. After such payment whatever amount remains balance be returned to the Insurance Company by a crossed cheque. The claimant is directed to make an application for disbursement of the amount within two months from today, failing which he will not be entitled to any interest thereafter on the compensation awarded as above.

The L.P.A. is accordingly disposed of.