

(2004) 12 JH CK 0011
In the Jharkhand High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Kuldeep Singh and Others

RESPONDENT

Date of Decision : 22-12-2004

Acts Referred:

Citation : (2007) 2 ACC 889

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; N.N. Tiwari, J

Bench : Division Bench

Judgement

1. This is the insurer's appeal against the judgment and award dated 1.8.2003 passed by the 1st Additional District Judge-cum-Motor Vehicle Accident Claims Tribunal, Seraikellaat Kharsawan in Compensation Case No. 32/1993 whereby the learned Tribunal has awarded Rs. 4,22,000 to the claimant-respondent No. 1 along with the interest at the rate of 9% per annum from the date of the claim application and on failure to pay the same penal interest at the rate of 12% per annum against the appellant-Insurance Company.

2. The facts giving rise to this appeal are that the claimant-respondent No. 1 claimed compensation of Rs. 5.47 lakh for 90% disability caused to him by the vehicle accident due to rash and negligent driving of vehicle Jeep No. ORM-932. According to the claimant, on 12.9.1990 he was driving a T.V.S. Moped bearing No. BPX-5040 along with one Kailash Chandra Agrawal (AW-1, the owner of the Moped). When he was passing through the village Okari on Sini-Kandra Road, he was dashed by Jeep No. ORM-932, which was being driven rashly and negligently by one Niranjana Dey (respondent No. 2) and as a result of which the claimant sustained multiple fracture injuries. The claimant had to undergo major surgery for three times and had to be confined to bed for a long period. Due to severe injuries, he has been rendered 90% permanently disabled. According to the claimant, he was carrying on and running a hotel business at Sini but due to his disability and restricted movement (only on crutches) he has been deprived of the capability of running his said hotel business out of which he used to earn about Rs. 2,000 per month. He claimed that he had to suffer a loss of 72,000

during the period of three years of his treatment till 1993 and he had to spend Rs. 75,000 on medical treatment. The claimant thus claimed Rs. 3,00,000 for loss of his efficiency and dependency and Rs. 1,00,000 for mental pain and sufferings and the amounts of loss and medical expenses.

3. The owner and the driver initially appeared but subsequently the proceeding held ex parte and the Insurance Company-appellant contested the claim case. The parties led their respective evidences.

4. The Tribunal framed the following issues:

- (1) Whether the claim petition is maintainable in its present form?
- (2) Whether the claimant has got any cause of action?
- (3) Whether the claim petition is barred by limitation?
- (4) Whether the offending vehicle Jeep No. ORM-932 was responsible for accident because of rash and negligent driving by the driver?
- (5) Whether there was any contributory negligence on the part of claimant/driver of the vehicle TVS 5040?
- (6) Whether the driver of the offending vehicle had a valid D.L.?
- (7) Whether the claimant suffered permanent disablement?
- (8) Whether the offending vehicle Jeep No. ORM-932 was insured with O.P. No. 3 validly?
- (9) Whether the claimant is entitled to get any compensation from O.P. No. 3, if so, the quantum thereof?

5. After through appraisal and consideration of the evidences and materials on record the learned Tribunal decided almost all the issues in favour of the claimant. While deciding Issue Nos. 4 and 5, the learned Tribunal has come to the finding that the accident took place due to rash and negligent driving of Jeep No. ORM - 932 and that there was no contributory negligence of the Moped riders i.e. that of the claimant and the driver of the Moped. The Issue Nos. 7, 8 and 9 were decided holding that the claimant has been rendered 90% orthopaedically handicapped which is permanent in nature and as the offending vehicle was insured with the Insurance Company-appellant, the said company is liable to pay the compensation for permanent disability caused to the claimant which has been assessed at Rs. 1,50,000 towards the medical expenses, Rs. 5,000 for pain and sufferings, Rs. 24,000 for actual loss of income + Rs. 24,000 x 16 multipliers i.e. = Rs. 3.84 lakh and the total of all the amounts has been assessed at Rs. 4,28,000. The learned Tribunal held that since the sum of Rs. 6,000 has already been paid to the claimant, he is entitled to receive the compensation of Rs. 4,22,000 from O.P. No. 3 - appellant with Interest as aforementioned.

6. In this appeal the validity of this award has been assailed on the following grounds: (1) The accident was caused due to collision between Jeep No. ORM 39 and TVS Moped No. 5054 and as the claimant-respondent was riding the TVS Moped, hence the owner and driver of the TVS are the necessary parties to the claim proceeding and as such in their absence, the claim case was itself bad for non joinder of the said necessary parties, (ii) The 90% permanent disability certificate was granted by the Civil Surgeon without any evidence of doctor of Tata Main Hospital (T.M.H.) where the claimant was treated, (iii) The driving licence of the claimant has not been properly verified and the total income has been assessed without deducting at least 1/3. (iv) Assessment of the compensation has wrongly been made, (v) The interest at the rate of 12% has been wrongly awarded.

7. At the time of hearing, Mr. G.C. Jha, learned Counsel appearing on behalf of the appellant, has laid much emphasis on the rate of interest awarded by the Tribunal inasmuch as according to him the claim of interest from the date of filing of the petition was not worthy of acceptance as protracted proceeding before the Tribunal was the result of the negligence of the claimant and as such the interest should not have been awarded from the date of filing of the petition rather the same should have been awarded from the date of the judgment. In support of the same, learned Counsel placed reliance on the decisions reported in Sanjay Kumar and Another Vs. Munnalal and Another, and National Insurance Co. Ltd. Vs. Prafulla Kumar Prusty and Another, In case of Sanjay Kr. Singh the claim of interest since the date of filing of the claim application was refused by the M.P. High Court on the ground that the claimants of that case did not pursue their case with due diligence and it was once dismissed and even thereafter the case was limping for a long time on account of negligence and fault on the part of the claimant. In National Insurance Co. Ltd. Vs. Prafulla Kumar Prusty and Another, the Orissa High Court awarded a lump sum amount towards interest holding that the full interest from date of application cannot be granted to the claimant who was found to be responsible for delay in finalisation of the claim before the Tribunal. The facts and circumstances of the instant case are entirely different from those indicated in the said decisions and as such the same have got no relevance for the purpose of the case in hand. No ground of wilful laches or negligence on the part of the claimant of this case has been made out either before the Tribunal or before this Court. There is no such whisper even in the memorandum of appeal. Learned Counsel next submitted that 90% disability has been accepted and held by the learned Tribunal in absence of the evidence of the doctor who attended upon the claimant, prescribed medicines and treated him. Relying upon a decision of this Court in Oriental Insurance Co. Ltd. v. Johan Sah @ Md. Johan and Ors. reported in I (2002) ACC 12 : 2001 (2) JLR 163 the learned Counsel submitted that the claimant has to establish his claim for compensation by producing cogent evidences. He further submitted that the doctor's evidence would have been the best evidence to testify the extent of the injury and disablement and sufferings undergone by the victim, but the doctor

who treated the claimant has not been examined. In the said Oriental Insurance Company (supra), cited by the learned Counsel, no evidence was produced to prove the injuries suffered by the claimant or the disability caused to him. In the said circumstances, the Court observed that, "No other evidence, medical or otherwise, was adduced by the claimant in the Tribunal in support of his claim for compensation." In the instant case the facts are entirely different and the evidences, oral and documentary, were produced by the claimant. The medical certificate was also produced which testifies 90% orthopaedic disability. All the evidences have been duly considered by the Tribunal. The learned Counsel lastly submitted that the accident was due to collision between the said Jeep and T.V.S. Moped and the driver, owner and insurer of the Moped were the necessary parties. The said ground has also been thoroughly considered by the learned Tribunal while recording his finding on Issue No. 5. Since it has been held that there was no contributory negligence of the Moped riders, we find no substance in the last submission also. No other ground has been pressed before us.

8. Mr. A.K. Sahani, learned Counsel appearing on behalf of the claimant-respondent strongly supported the judgment/award of the learned Tribunal. According to the learned Counsel the Tribunal has thoroughly discussed all the points in controversy while deciding the different issues separately and the findings of the Tribunal are based on evidences and material on record and the same are sound and legal. Learned Counsel further submitted that in case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the Supreme Court has upheld the award of interest at the rate of 12% per annum and there is no illegality in the judgment and award of the Tribunal in allowing the interest at the rate of 9% per annum in this case.

9. After hearing the learned Counsel and perusing the records we find that the learned Tribunal has discussed the oral and documentary evidences and material on record. The decision on each issue is well considered and based on admissible evidences. We find no infirmity in the impugned award of the learned Tribunal.

10. There is, thus, no merit in this appeal which is accordingly, dismissed with costs payable by the appellant, which is quantified at Rs. 5,000