
(1986) 06 OHC CK 0001
In the Orissa High Court

Oriental Fire and General Insurance Company Limited APPELLANT
Vs
Pratap Chandra Pani and Another RESPONDENT

Date of Decision : 20-06-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110D, 96

Citation : (1988) 1 ACC 138

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—These two appeals one by the insurer and the other by the owner are u/s 110-D of the Motor Vehicles Act, 1939 (in short "the Act").

2. On 23-6-1982, while the claimant was moving in Pipili-Nimapada Road in a scooter as a pillion rider the Matador Mini Bus of the owner appellant bearing Registration No. ORX 4607 dashed against the scooter causing injuries on the body of the claimant on account of the accident. Therefore, the claimant filed a petition on 29-1-1983 u/s 110-A of the Act for compensation of Rs 80,000/-. The owner of the vehicle denied the negligence in driving the Mini bus. The insurer denied its liability.

3. Mr. M M. Das, the learned Counsel for the injured respondent raised a preliminary objection about the maintainability of the appeal by the insurer. There is allegation that the owner colluded with the injured claimant. The owner contested the claim petition. Insurer, in such a circumstance can challenge the claim only on the grounds available u/s 96 of the Act. The appeal can be entertained only on those grounds. After hearing Mr. Basu, the learned Counsel for the insurer appellant I am satisfied that no convincing ground has been raised for bringing the appeal within the scope of Section 95(2) of the Motor Vehicles Act. Mr. Das is justified to object that the appeal is not entertainable.

4. Mr. S.S. Rao, the learned Counsel for the owner appellant submitted that the quantum of compensation is most unreasonable. In view of the submission of Mr.

Rao, I carefully considered the materials on record to independently consider the just compensation payable to the injured claimant.

5. Claimant is a Ministerial Assistant in Utkal University. Before the accident he was commuting the distance between his office and his village by cycle daily. Now he is not able to ride his cycle on account of the accident as one of his legs has become shorten. He has to depend on other modes of conveyance to commute the distance. Thus, as a result of the accident, he had to sustain expenses throughout the period of his service on that account. His monthly expenses on this count can be taken to be Rs. 200/- or annually Rs. 2,400/-. A claimant is not to enrich himself on account of the injuries. In case a method is available by which he can get annually Rs. 2,400/- the same would be the just compensation. It is a known fact that in the Utkal University Campus itself, there is a branch of bank and also a Post Office. If fixed deposit is made from which the claimant can get annually Rs. 2,400/- the same should be the just compensation. The amount of Rs. 24,000/- if kept in fixed deposit would carry interest of Rs. 2,400/- annually. Therefore, the just compensation on this account is determined at Rs. 24,000/-.

6. From the X-ray plate and the prescriptions filed in this case, it is seen that the injury was quite serious. Though the appellant was not in the hospital as an indoor patient for a long time, his treatment must have continued for a long period. I think the amount of Rs. 6,000/- would be just compensation in this case towards medical expenses. It needs no evidence to prove that during the period of injuries, the claimant would have required assistance of another. Claimant has adduced evidence to prove that he engaged a person for assistance and was paying Rs. 5/- per day to him during the period of treatment. This being a reasonable expenditure is to be awarded to the claimant. In this respect, a sum of Rs. 1,000/- is just and reasonable.

7. Mr. M.M. Das, submitted that the claimant is entitled to compensation for the mental pain of which he is to suffer perpetually. It is to be taken note that the claimant has become lame. When a person is physically disabled on account of the accident, he is bound to suffer in mind and body. Throughout the life time he suffers with a feeling that he is no more a normal man in the society and would not be able to enjoy the amenities of life as a normal man. The claimant in this case cannot walk freely. He would find himself to be a handicapped man in the Company of others with whom he was freely moving. The fact that he would not be able to walk for less to speak of running, will be a perpetual mental torture. Some of his friends and associates are likely to give up associations with him on account of the same. This mental torture of the claimant can be compensated if he is paid a sum of Rs. 9,000/- towards compensation in this case in the absence of positive evidence.

8. In conclusion, the claimant is entitled to Rs. 24,000/- towards conveyance expenses, Rs. 6,000/- towards medical expenses, Rs. 1,000/- towards payment to an assistant during the period of his treatment, and Rs. 9,000/- towards

physical and mental pain which comes to Rs. 40,000/-. u/s 110-CC of the Act, he ought to receive interest on this amount from the date of application u/s 110-A. In case, payment is made within three months from today, the rate of interest shall be 10% per annum. On failure, claimant shall be entitled to interest at 12-1/2 % per annum from the date of application till the date of realisation or payment of the same. The entire amount shall be paid by the insurer appellant.

9. In the result, Misc. Appeal No. 127 of 1986 is allowed in part. Misc. Appeal No. 93 of 1986 is dismissed. Cross-objection of the claimant is dismissed. There shall be no order as to costs.