

(2001) 07 JH CK 0091
In the Jharkhand High Court
Case No : M.A.No. 79 of 1995

Oriental Insurance Company Ltd.

APPELLANT

Vs

Johan Shah @ Md. Jahan and Others

RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2002) 50 BLJR 305

Hon'ble Judges : Vinod Kumar Gupta, C.J.;D.N. Prasad, J

Bench : Division Bench

Advocate : G.C. Jha, for the Appellant; Arvind Kumar Lall, for the Respondent

Final Decision : Partly Allowed

Judgement

1. This appeal by the Insurance Company is against the Award and judgment passed by the 4th Addl. Judicial Commissioner, Ranchi, dated 10.2.1995, whereby a sum of Rs. 2,00,000/- with interest, initially at the rate of 10% per annum and later on at the rate of 10%, has been awarded in favour of the respondent No. 1 and against the appellant.

2. The case of the respondent No. 1 claimant before the Tribunal was that he had received injuries because of an accident, which occurred on 22.4.1990. In this appeal, we are not concerned with any question relating to the occurrence of the accident as such or whether the accident occurred because of the rashness and negligence on the part of the driver of the vehicle. That is not an issue for adjudication before us in this appeal.

3. The limited issue raised for our adjudication by the appellant-Insurer is with respect to the determination of the quantum of compensation based on the assessment as per the learned Tribunal with regard to the alleged injury allegedly sustained by the respondent No. 1 and the alleged disablement suffered by him on account of, and as a result of the accident in question. What do we find from perusal of the judgment under appeal is that the claimant, apart from his own

testimony, did not produce any evidence whatsoever to prove any fact either about any injury being suffered by him, or any disablement having been caused to him or any expenses incurred by him for the alleged treatment or for any injury. Admittedly, no doctor was produced. No other, evidence, medical or otherwise, was adduced by the claimant in the Tribunal in support of his claim for compensation. It is an established principle of law that if a claimant claims compensation for a wrong committed to him by a wrong doer, he has to establish his claim with regard to such facts and figures which justify the determination of the compensation amount on the basis of the evidence adduced by the claimant in the Court, specially so, in a Claim petition filed under Sections 144 and 166 of the Motor Vehicles Act with regard to an alleged injury received by the claimant and the alleged disablement, partial or complete, suffered by him. He is under an obligation to prove the same by production of cogent evidence.

4. In a case relating to the claim on account of an alleged injury allegedly sustained by a claimant, best evidence is of the medical witness. The Doctor who attended upon the claimant, treated him and prescribed medicines etc. for him, is the best person. He is the person who is in a position to testify as to whether the claimant received any injury, if so, its extent, and as to whether any disablement, permanent or temporary or partial, was suffered by the claimant. Coupled with this would be the evidence required to prove the expenditure which the claimant had to incur for treatment of the injury and for the sufferings etc. undergone by him. Such evidence can be in the form of witnesses who would come and testify about the expenses incurred by the claimant. These witnesses, medical as well as other witnesses, would always be subject to cross-examination by the opposite party.

5. What we see in the case before us, however, is that the claimant-respondent No. 1 chose not to produce any evidence, much less any medical witness, in support of his contention that he had suffered injury, disablement and had incurred expenditure in treating himself. His bare and bald testimony cannot be a substitute for the evidence. If he thought that by his own statement, appearing as his own witness, he could comply with the requirements of proving the facts, he was mistaken.

6. The Accident Claims Tribunal, therefore, was totally wrong and misdirected itself in allowing the claim of respondent No. 1 and passing an award for as high an amount as Rs. 2 lakhs without there being an iota of evidence with respect to the injuries, the disablement or expenses incurred by the claimant.

7. In the normal circumstances, we should have allowed the appeal and set aside the judgment of the Tribunal. However, at this stage, Mr. A.K. Lal, learned Advocate appearing for the claimant-respondent No. 1 has submitted that his client be given a chance to adduce evidence in the Tribunal and to prove the facts relating to injury and the expenditure etc. We, in the interests of justice, allow the prayer of Mr. A.K. Lal and acceding to his request, remit the case to the Tribunal for taking additional evidence by enabling the claimant to prove the

aforesaid relevant facts in the light of the observations made hereinabove.

8. The appeal accordingly is partly allowed. The judgment of the Tribunal accordingly is set aside. The case is remanded to the Motor Accident Claims Tribunal, Ranchi for taking additional evidence in the light of the directions and observations made hereinabove. After the evidence is concluded, the application shall be disposed of in accordance with law.

9. Appeal partly allowed.