

(1975) 11 OHC CK 0005
In the Orissa High Court
Case No : M.A. No. 201 of 1973

State of Orissa

APPELLANT

Vs

Harihar Hati

RESPONDENT

Date of Decision : 24-11-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 279, 377
Motor Vehicles Act, 1988 — Section 110A

Citation : (1976) ACJ 441

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : B.B. Mohanty, for the Appellant; A.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

B.K. Ray, J.—The State of Orissa is the Appellant in this appeal which challenges the award of the 2nd Motor Accident Claims Tribunal, Puri awarding Rs. 9,100/- to the Respondent on account of damages caused to him in a motor accident.

2. The claimant-Respondent filed an application u/s 110-A of the Motor Vehicles Act before the Tribunal claiming compensation of Rs. 19,350/- for damages sustained by him in an accident caused by a jeep bearing registration No. ORP 1172 belonging to the Appellant on the following allegations: On 8.1.71 at 4.30 p.m. the Respondent was going on his bicycle and was proceeding slowly on the left side of the road from the north to the south. The Government jeep bearing the aforesaid registration number came from the opposite direction driven most rashly and negligently at a high speed without blowing horn. The driver driving the jeep was not mindful and was busy in talking with the occupant of the vehicle Mr. M. Balaram Das, Deputy Director of Agriculture. While coming at a high speed almost in the middle of the road the vehicle suddenly swerved to right and dashed against the Respondent's bicycle as a result of which the Respondent received serious injuries and became senseless at the spot. His bicycle was also damaged. The Respondent was then carried to the Capital Hospital from where

he was removed to the S.C.B. Medical College Hospital for better treatment as one of the injuries sustained by him was bone fracture of both the bones of the left leg. He was hospitalised as an indoor patient and was discharged with plaster on his leg. X-Ray photos taken of the injuries on several occasions after his discharge revealed some improvement. The Capital police started a criminal case under Sections 377 and 279 Cr.P.C. against the driver of the vehicle. The Respondent was a healthy and active young man with strong body. After the accident he became partially disabled and physically unfit. He could not walk properly, run, play, climb steps and take up hard and strenuous physical work. As a result of the accident the Respondent was mentally shocked and had undergone physical pain and mental sufferings. His longevity was shortened. He also lost his pay for the period during which he was hospitalised and was unable to attend to his normal work and spent money for his treatment, food, medicine and attendants. On account of the physical disability of permanent nature the Respondent was expected to incur further expenditure in order to enable him to carry on till his end. He was therefore, entitled to compensation of Rs. 19,350/- with interest at the rate of 6 per cent per annum from the date of filing his application till the date of payment.

3. The Appellant in its objection to the claim of the Respondent before the Tribunal pleaded inter alia that the claim was not maintainable and barred by time; that the driver of the jeep was driving the vehicle at the relevant time without rashness and negligence; that the damages claimed by the Respondent were too high, excessive and imaginary; that the jeep in question was moving at the relevant time at a very low speed as the road was too crowded; that as soon as the jeep reached Gandhi Bhavan the Respondent was found coming from the opposite direction carrying a boy in front of his cycle and a heavy bag behind him on the carrier; that on account of the heavy load the Respondent was not able to keep the balance on the cycle and could not negotiate the gradient; that as a result of this, he fell on the jeep; that the driver of the jeep was not engaged in talking with its occupant as alleged; that when the Respondent suddenly dashed against the jeep the driver applied brake to the vehicle as a result of which the same stopped on the road and did not cause any further damage or injury to the Respondent; that the accident so caused was entirely due to the negligence and fault of the Respondent; that the Respondent did not receive any serious injury and his longevity was not shortened as alleged and that the damage to the cycle was very minor.

4. The Tribunal held that the claim was maintainable and the claim petition was not barred by time; that the accident was caused due to negligence and rashness of the driver driving the vehicle and that there was no contributory negligence on the part of the Respondent.

5. The learned Addl. Government Advocate on behalf of the Appellant does not challenge the aforesaid findings of the Tribunal. He only challenges the quantum of damages awarded on two heads. It appears from the impugned award that a

sum of Rs. 1,000/- has been awarded towards the expenses for treatment, food, medicine, etc. and Rs. 1,000/- for reduction in the longevity of the Respondent. It is seriously contended by the learned Addl. Government Advocate that there is absolutely no basis on which the award of Rs. 1,000/- for treatment, food, medicine, etc. and Rs. 1,000/- for reduction in longevity of the Respondent can be sustained. The evidence disclosed in the case reveals that the Respondent has to Jump throughout his life on account of the injury sustained on his left leg as a result of the accident. Respondent's examination on 15.3.73 shows that he has a fracture of tibia and fibula in the middle part of his left leg manumitted; that his left leg extending from left ankle just below the left knee is swollen due to impacted obstruction caused by the manumitted fracture; that the over lying skin is disfigured; that the movement of the left ankle joint is much restricted and that there is disfigurement of the left leg due to the manumitted fracture. In spite of all these deformities found in the left leg of the Respondent there is absolutely no evidence as to whether as a result of the aforesaid deformities the life of the Respondent is likely to be shortened. There is also no evidence as to the actual expenses incurred by the Respondent in course of his treatment. Law is well settled that in case like this the onus is upon the claimant to prove that he is entitled to the amount claimed as damages. Merely because in assessing damages there is bound to be an element of conjecture, the Tribunal is not entitled to imagine things and to award damages without any evidence whatsoever In view of the fact that there is absolutely no evidence to support this part of the Tribunal's award as mentioned above the contention of the learned Addl. Government Advocate is bound to prevail. So far as the remaining part of the award is concerned, the learned Addl. Government Advocate has not rightly challenged the same. In the result, I hold that the Respondent is not entitled to Rs. 1,000/- towards the expenses for his treatment, food, medicine, etc. and Rs. 1,000/- for reduction in his longevity.

6. I, therefore, allow the appeal in part. The award of the Tribunal is modified and it is declared that the Respondent is entitled to Rs. 7,100/- together with interest thereon at the rate of 6 per cent per annum from the date of filing of the claim petition till the date of realisation instead of Rs. 9,100/- awarded by the Tribunal. Parties are to bear their own costs of this Court.