
(1988) 04 OHC CK 0001
In the Orissa High Court

State of Orissa

APPELLANT

Vs

Prafulla Kumar Satpathy

RESPONDENT

Date of Decision : 05-04-1988

Acts Referred:

Citation : (1988) 2 ACC 41 : (1989) ACJ 384

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Judgement

P.C. Misra, J.—This appeal arises out of an accident claims case disposed of by, the First Motor Accident Claims Tribunal, Cuttack.

2. The petitioner was involved in an accident on 20-6-1980 when he was coming from Bhubaneswar to Cuttack in his Motor Cycle bearing Registration No. ORC-3231 which was hit by a Motor Car (ORP-6295) from the back side. The petitioner was thrown out of the Motor Cycle and the left front wheel of the car ran over the right leg of the petitioner below the knee joint resulting in compound fracture at the tibia and fibula bones and also some sprain in the chest. The car belongs to the Finance Department of the Government of Orissa, which was being driven by one Gouranga Charan Nayak, the Driver of that car. The petitioner alleged that the car was being driven rashly and negligently at a high speed of 70 K.Ms. per hour and did not blow any her before it dashed from against the Motor Cycle from its back side near about Sri Ram Temple at Bhubaneswar. The petitioner was removed to the Bhubaneswar Hospital where he was given first-aid and was then shifted to S.C.B. Medical College and Hospital, Cuttack where he became an in-door patient from 20-6-1980 to 4-8-1980 and again from 27-10-1980 to 18-11-1980. He was surgically operated twice in the hospital. Even after discharge from the hospital, he has been although under medical treatment and claims to have been suffering from permanent disability affecting the future prospects of his life. He has given the details of expenses said to have been incurred by him for his treatment and also the loss sustained by him in his absence as well as for repairing the Motor Cycle. The total claim

made by him before the 1st Motor Accident Claims Tribunal was Rs. 1,50,000/-. The State of Orissa, who was impleaded as an opp. party, filed a written statement denying its liability. Their case is that the car was not being driven rashly or negligently and that it was at a reasonably speed. The claim of compensation claimed by the petitioner is also disputed and it is stated that the accident occurred as the petitioner lost his balance as a result of which he fell down from the Motor Cycle and incidentally sustained the injuries.

3. The learned 1st Motor Accident Claims Tribunal after consideration of the evidence led before it by the petitioner and the opp. party allowed the claim in part against the opp. party directing to pay a compensation of a sum of Rs. 1,00,465/- with interest at 9% per annum from the date of claim till its realisation. Being aggrieved by the aforesaid award passed by the 1st Motor Accident Claims Tribunal, Cuttack in Misc. Case No. 168 of 1983, the State of Orissa has filed this appeal challenging the legality and the correctness of the award and has contended that the respondent, who was the petitioner before the Tribunal, is not entitled to any compensation at all. The respondent on being noticed in this appeal has filed a cross appeal claiming that the compensation awarded should be enhanced to Rs. 1,50,000/- with cost and interest.

4. The respondent has examined as many as 5 witnesses including himself as PW 5, PWs 1 and 2 are said to be the eye witnesses to the occurrence. It appears from the evidence of PWs 1, 2 and 5 and also admitted in the written statement filed by the State that the accident took place when the car was over-taking the Motor Cycle. Admittedly the respondent (PW 5) was on the left side of the road and the car dashed against the Motor Cycle from behind. The seriousness of the injuries suffered by the respondent is not disputed in this appeal. The entire evidence have been placed before me by the learned Counsel appearing for the appellant and I do not find any reason to discard the evidence of the eye witnesses who in all material particulars corroborate each other as well as the evidence of PW 5. The learned Counsel appearing for the appellant at one stage tried to make out a case that the Motor Cycle was being driven by the respondent at a reckless speed and that the Motor Car was moving at a much less speed. This argument was rightly abandoned for the simple reason that since the Motor Car has dashed the Motor Cycle from behind, the speed of the former must be more than the latter. The accident occurred on the road leading towards Vani Vihar near about Sri Ram Temple, which is admittedly a busy road. Over-taking a Motor vehicle on that road requires due care and caution, which it appears from the evidence of the aforesaid witnesses, was not taken by the driver of the car. The driver of the car is the only witness examined on behalf of the appellant, who stated that while he was going on the road leading to Master Canteen towards Vani Vihar one Motor Cycle came on his left side and dashed against the car in between the left front wheel and the door. The aforesaid story does not fit in with the written statement filed by the State, where it has been stated that the driver of the Motor Car after blowing horn tried to pass the Motor Cycle with utmost care and caution, but the Motor Cyclist somehow or other lost

his balance and fell down from the Motor Cycle and received some injuries. In the circumstances, the finding that the accident took place due to the rash and negligent driving of the driver of the car stands established by the evidence on record.

5. The next question that requires consideration is as to whether the compensation awarded by the Accident Claims Tribunal is proper. It has already been stated that in this appeal the appellant disputes the assessment of compensation as high and arbitrary, whereas the respondent has filed the cross appeal claiming higher compensation as per his claim made before the Tribunal. The evidence of PW 4 (Doctor) is that there was compound fracture in the right leg of the respondent and that he operated on his leg and treated him as an indoor patient in the S.C.B. Medical College & Hospital, Cuttack as per his bed-head ticket, Exts. 1 & 2. The respondent was admitted in the hospital on 20-6-1980 and on the same day he was operated as there was compound fracture on his right leg. The bed-head ticket, Ext. 1, shows that he was discharged from the hospital on 4-8-1980 with the plaster on his leg. He was again admitted on 27-10-1980 and was treated by Dr. R.C. Mohanty as per the bed-head ticket, Ext. 2. There was a second operation thereafter, in which there was nailing and bone grafting on the right leg of the respondent. According to the Doctor, the respondent may require third operation for removal of the plate, screw etc. from his leg. His right leg has been shortened for which he will limp and would not be able to undertake strenuous work. The third operation as suggested by the Doctor would be a major one, which cannot be done in Orissa and can only be done at Bombay. The aforesaid statement of the Doctor remains unassailed in cross-examination and is amply proved by the bed-head tickets and the X-Ray photographs proved in this case. The respondent has proved the cash memos in Ext. 3 series in evidence of the money spent in purchase of medicines. On a careful consideration of evidence on record, the Tribunal assessed the income of the respondent at Rs 1000/- per month. Giving a reasonable margin to the exaggeration in the evidence of PWs 3, 5, I do not find any reason to discard the said finding. The learned Counsel appearing for the respondent vehemently urged that the loss of future prospect and enjoyment of life has been lowly assessed, which requires enhancement. The disability of respondent is said to be 60%, but giving my anxious consideration to the nature of injuries suffered by the respondent and his physical disability resulting therefrom, I do not think that the assessment of compensation has been improper. In a case reported in Gursharan Singh Sandhu Vs. State Of Haryana and Others, the injured sustained multiple fracture and cross injury to the right leg for which he was hospitalised for 510 days and had to undergo six major operations and three minor operations. The injury resulted in shortening the right leg by one inch and the movement of the right leg was restricted. He was a young bachelor and drawing a pay of Rs. 760/- per month. His chance of marriage and promotion in future was found to have been seriously affected by the unfortunate accident. The High Court of Punjab and Haryana in the aforesaid case considered a compensation of

Rs. 1,25,000/- to be proper. In a case from the High Court of Himachal Pradesh reported in Himachal Road Transport Corporation Vs. Mani Ram, there was a compound fracture of both bones of left leg which resulted in infaction in bones and tissues. The injured was aged 32 years and drawing a pay of Rs. 750/- per month. The permanent disability of the injured resulting from the accident was assessed at 50%. The High Court upheld the Tribunal's award of Rs. 1,05,200/-. The present case is comparable in many respects with the facts in the aforesaid two cases. I would, therefore, hold that the compensation awarded by the Tribunal is reasonable and proper and does not require any modification either by reduction it as claimed by the appellant or by enhancing it as urged in the cross appeal by the respondent.

6. In the result, the appeal and the cross appeal are both dismissed. But in the facts and circumstances of the case there would be no order as to costs.