

(2007) 07 JH CK 0059
In the Jharkhand High Court

Sunaina Devi

APPELLANT

Vs

Sunita Kumari and Another

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Citation : (2007) 4 JCR 564

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Judgement

1. This appeal by the claimant/appellant is for enhancement of the amount of compensation, awarded to the appellant by the Claims Tribunal, Hazaribagh by order dated 6.1.2007, passed in Title (MV) Suit No. 81 of 2004.

2. The facts of the case in brief is that on 10.4.2004, the appellant along with her husband Naresh Kumar Gupta was travelling on a Jeep bearing Registration No. JH02 B 5905 on their return to home. On account of the alleged rash and negligent driving by its driver, the vehicle dashed against a roadside tree, resulting in severe injuries to the passengers of the vehicle including the appellant and her husband. Both of them were removed to the nearest Hospital, where they were provided first-aid and thereafter both of them were admitted to the local Nursing home for proper medical treatment. The appellant has claimed that she had suffered multiple grievous injuries and had undergone medical treatment at the nursing home as an indoor patient for about ten days and in course of which, she had incurred heavy expenses both towards fees for surgical operation and also for purchasing medicines. Claiming herself to be aged about 22 years, the appellant has claimed that she used to earn about Rs. 2,000/- by way of stitching clothes and doing other sundry jobs and she had suffered loss of earnings during the period of her treatment as a patient in the nursing home. She has further claimed that as a result of the Injuries, she had suffered 25 per cent disablement and is unable to pursue her normal daily work. On the basis of such facts, she has claimed an amount of Rs. 3,00,000/- (Rupees Three lakhs) by way of compensation from the respondents, namely, the owner of the vehicle

involved in the accident and the Insurer, namely, the New India Assurance Co. Ltd.

3. The respondent, namely, the New India Assurance Co. Ltd., being the insurer of the motor vehicle had contested the case by filing the written statements. The insurer had denied its liability of paying any compensation on the ground that the owner of the vehicle did not produce the driving license of the vehicle or the other documents relating to the vehicle and furthermore, that the claimant has not produced the injury or the medical certificates of the Doctor. The respondent No. 1 being the owner of the offending vehicle had also contested the claim by filing her written statement under which she had denied the entire claim of the claimant. She has claimed no liability for the payment of any compensation on the ground that the vehicle was insured under the New India Assurance Co. Ltd. at the time of accident and the driver of the vehicle did possess a valid driving license and it was the liability of the insurer to pay the amount of compensation to the third party. On the basis of the rival pleadings, the tribunal had framed issues relating to the maintainability of the claim petition and as to whether the claimant has any cause of action to file the claim and further, as to whether the claimant is entitled to claim and receive. The compensation and if so the quantum of compensation and the party, who is liable to pay such compensation.

4. After considering the evidences adduced by the claimant, the tribunal had recorded its finding that the accident in the manner as narrated by the claimant did occur and that the vehicle bearing Registration No. JH02 B 5905 belonging to the respondent No. 1 was involved in the accident and further, that the accident had occurred on account of the rash and negligent driving of the vehicle by the driver. The tribunal had further recorded its finding that the vehicle was insured under the respondent No. 3, the New India Assurance Co. Ltd. on the date of accident. While recording its finding that the respondent has a valid cause of action to file her claim petition against the respondent-owner and the insurer of the offending vehicle, the tribunal on the basis of the evidence adduced, held that the claimant had suffered 25 per cent disability and that she had incurred expenditure towards her medical treatment and for purchase of medicines. An amount of Rs. 25,000/- was awarded under the heading of physical disability and an amount of Rs. 13,400/- " towards the Nursing home expenses and an amount of Rs. 500/- towards the purchase of medicines, totaling to a sum of Rs. 38,900/- was awarded to the complainant.

5. Aggrieved on the amount of compensation awarded as being too meager and unjustified, the appellant has preferred the instant appeal for enhancement of the amount of compensation.

6. Assailing the finding of the tribunal on the quantum of payable compensation, learned Counsel for the appellant submits that the amount awarded by the learned tribunal is certainly disproportionate to the injury and the degree of disablement suffered by the claimant. The tribunal has not considered the loss of earnings, which the claimant has suffered during the period of undergoing

medical treatment and has also erred in failing to award any compensation for the physical and mental pain and agony, which the claimant had suffered on account of the injuries.

7. Learned Counsel for the Insurance Company on the other hand, maintains that the claimant having not adduced sufficient evidence to confirm that she has suffered any permanent disability or any loss of earnings, the amount awarded by the tribunal by way of compensation in the facts and circumstances of the case, is just and proper.

8. It appears that though the appellant has claimed that she used to earn about Rs. 2,000/- per month by way of stitching clothes etc. but she has not adduced any evidence whatsoever in confirmation of the same and, therefore, the learned tribunal has observed that the claimant being a house wife, has not suffered any loss of earning during the period of her treatment at the Hospital. It further appears that though the claimant had adduced the certificate of the doctor by way of evidence that she has suffered 25 per cent disablement but the nature of the injury and the purported disablement has also not been stated. It is not the case of the claimant, that on account of the purported partial disablement, she is unable to carry out her daily chores and house-hold work. Under such circumstances, the amount of Rs. 25,000/- under the head of partial disablement as awarded by the tribunal is just and proper. The appellant has not made out any case for a greater amount of compensation under this head. It, however, appears that though the claimant has filed several vouchers (marked as Exhibits x to x/6) in respect of the medicines purchased and claiming that the expenses incurred for the purchase of the medicine was about Rs. 2,000/- the learned tribunal had refused to accept the same merely on the ground that the vouchers were not adduced in evidence by adequate proof. This, despite the fact that the vouchers indicated the name of the doctor (CW 5), on whose prescription, the medicines were sold by the Chemist to the claimant.

9. It further appears -that no compensation was awarded for the mental and physical pain suffered by the claimant on account of the injuries caused to her and also on account of the loss of amenities, which she had suffered during the period of her treatment at the Nursing home. The claimant is certainly entitled to compensation on the above heads also.

10. Accordingly, we awarded a further sum of Rs. 10,000/- towards mental and physical pain and agony and a sum of Rs. 1500/- towards purchase of medicines. These amounts shall be in addition to the amount awarded by the tribunal by way of compensation. The Opposite Party No. 2, namely, the New India Assurance Co. Ltd., is directed to pay a total amount of Rs. 50,400/- as compensation, which includes the amount enhanced hereby, to the claimant along with interest at the rate stipulated by the tribunal and to be deposited in the manner as directed by the tribunal.