

(2009) 02 JH CK 0091
In the Jharkhand High Court
Case No : M.A. No. 66 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

Umesh Prasad Gupta and Others

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Citation : (2010) ACJ 1875 : (2009) 57 BLJR 1953

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Advocate : Shekhar Prasad Sinha and P. Mahapatro, for the Appellant; Deepak Kumar, B.V. Kumar and R. Kumar, for the Respondent

Judgement

1. This appeal has been filed by the appellant Insurance company against the judgment and Award dated 1st December 2005 passed by Sri D.G.R. Patnaik, District Cum-Motor Vehicle Accident Claim Tribunal, Koderma in Claim Case No. 13 of 2003 whereby he has directed appellant/opposite party No. 3 New India Assurance Co. Ltd to pay the compensation of Rs. 3,58,646.02 being awarded amount to the applicant/respondent No. 1 along with interest calculated at the rate of 9% per annum on the principal amount from 25.6.2003 till the date of final payment.

2. It appears that the respondent No. 1 who is by profession a legal practitioner, was returning to his house at Jhumri Telaiya after attending the court i.e. Hazaribagh Civil Court on 27.5.2002. He was traveling as a passenger on a Trekker having registration Number JH-02A-8225 accompanied by other passengers in the same vehicle. The respondent No. 1 (applicant) has stated that the driver of the Trekker was driving the Vehicle at a breakneck speed in rash and negligent manner and when the vehicle reached near Karso plant, it dashed against the rear side of a truck which was parked on the left flank of Ranchi Patna Road. As a result of the heavy impact the passengers who were traveling in the trekker, sustained injury. One of them namely Ramshwar Paswan died at the spot while another passenger namely Sunil Soni died subsequently. The

applicant/respondent No. 1 Umesh Prasad Gupta had also sustained multiple grievous injuries including fracture of his left leg (femur bone) and fracture of his right arm besides fracture of five ribs and nasal bridge. Several persons from the nearby villages arrived and brought the injured persons to the Barhi Hospital for medical treatment. The matter was reported to the police and a Criminal case was registered against the driver of the offending Trekker. The respondent No. 1/ applicant, herein after referred as the injured, after receiving preliminary medical treatment at Barhi Govt. Hospital, was brought to Imam Clinic of Jhumri Telaiya where he obtained medical treatment. Later on he was referred for appropriate medical treatment to Sisir Seva Kendra, Ranchi and he was treated by the leading orthopedic surgeon Dr. Amit Mukherjee. He remained in the aforesaid Seva Kendra as an indoor patient from 28.5.05 to 16.6.05. The injured adds that inspite of surgical operation for treatment of the femur bone of his left leg and placement of steel rod and plates, he has suffering deformity on account of shortening of his left leg which has rendered him handicapped and permanently disabled. The injured further adds that as a consequence of injuries sustained by him in the accident, he has suffered pain and suffering lots of expectation of life discomfort. On account of this injury he has incurred expenses for his treatment. He was earning Rs. 4,000/- (Rupees four thousand) per month as legal practitioner and his age was 44 years at the time of accident.

3. In response to the notice opposite party No. 1 Ranjit Kumar and opposite party No. 3 the New India Assurance Co. Ltd filed their written statement. The proceeding before the tribunal was ex-parte against the opposite party No. 1 and 2 and only O.P. No. 3 Insurance Co. contested the matter. It has been admitted by Ranjit Kumar the owner of the Vehicle that the vehicle was insured and covered under policy of Insurance under the New India Assurance Co. Ltd Ranchi and the insurance was valid from 27.2.02 to 26.2.03 and the driver of the vehicle posses valid and effective licence and he has not committed any breach of contract of Insurance.

4. The injured has examined seven witnesses to prove his case. The applicant himself is Applicant witness No. 6 and the Applicants witness No. 7 is Dr. Khuran Anwar who was on duty at Iman Clinic at Jhumri Tellaiya on 27.5.2002. He deposed that Umesh Prasad Gupta the injured was brought to the Clinic on 27.5.2002 at about 2. P.M. He has proved the medical/Injuries and the certificate issued by him. He had suffered injuries on his chest, right hand, left leg and nose and there were fracture injuries also. He was removed to Sisir Seva Kendra Ranchi on 28.5.02 for his treatment. Dr. Amit Mukherejee treated him. The doctor proved the injury report issued by him. He stood the test of Cross-examination. Dr. Pawan Kumar applicant witness No. 5 has deposed that he is an orthopedic doctor and that on 8.1.04 the applicant Umesh Prasad Gupta was examined at Koderma Hospital by the Medical Board and after considering all the report X-ray plate"s etc. the board consists of Dr. V. Kumar Dr. Dilip Kumar and Dr. Haricharan Ram, has opined that the applicant Umesh Prasad Gupta had suffered 30% disability. The applicant has suffered shortening of his hipbone as

such he has become handicapped.

5. The injured applicant witness No. 6 has deposed that one of the offending vehicles belongs to Ranjit Kumar and the said offending vehicle was insured with the New India Assurance Co. He further said that Barhi P.S. Case No. 101/02 was registered for the same. He was traveling in the Trekker having registration No. Jh-02A-8225 as a passenger which met with the accident.

6. The learned Tribunal after considering the evidence on record and considering the fact and circumstances of the case and taking overall view of the matter, came to the conclusion that the applicant is entitled to get non pecuniary damage to the extent of Rs. 50,000/- and pecuniary damage for loss of earning during the period of eight months from 28.5.02 to 9.1.03 when he could not attend the court @ Rs. 4000/- per month, Rs. 32,000/- and further Rs. 15,600/- for expenses of Medical treatment and X-ray charges and other hospital charges. He is entitled to get Rs. 31,046/- for his expenses at Dr. Imam Clinic. In our view this amount awarded by the Tribunal is reasonable. Considering the recent case law of the Supreme Court of India in this point reported in Sunil Kumar Vs. Ram Singh Gaud and Others, where the injured was aged 29 years, drawing Rs. 4000/- per month suffered 45% permanent disability total loss of income was taken to be Rs. 2,59,000/-. Taking guideline from the case law mentioned above as the income of the respondent No. 1 / claimant of the case at hand is 30% suffered by him, we are of the view that the capacity of the respondent No. 1 to earn in future would be reduced by Rs. 1,200/- per month approximately. If 1/3rd is deducted towards miscellaneous expenses, the loss of income come to Rs. 800/- per month which in turn come to Rs. 9,600/- per annum. Respondent No. 1 was 44 years of age at the time of accident. Taking the multiplier to be 15 (as per the second Schedule to Section 163-A of the Act) the total loss of income comes to Rs. 1,44,000/- for his permanent disablement to the extent of 30% percent. In our considered opinion giving compensation on different heads as mentioned above there is no justification in giving another Rs. 50,000/- for discomfort and inconvenience on account of loss of free movement.

7. In this regard it is significant to refer the recent decision of the Hon''ble Supreme Court of India reported in Syed Basheer Ahamed and Others Vs. Mohd. Jameel and Another, . It has been observed at para 9 of the judgment that:

Similarly although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the persons(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependants of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

Accordingly, we modify the award to the extent in different heads Rs. 50,000/- +

Rs. 32,000/- + Rs. 15,000/- + Rs. 31,046/- as awarded by the learned Tribunal + Rs. 1,44,000/- for 30% permanent disability which comes to Rs. 2,72,046/- and to round up the amount it comes to Rs. 2,73,000/-.

8. Accordingly, we modify the award of Rs. 3,58,646.02 passed by the tribunal to Rs. 2,73,000/-. The said amount shall be payable to the applicant. The aforesaid amount shall also carry interest @ of 9% per annum from the aforesaid date i.e. 25.6.2003 till the date of final payment.

As regards the liability of the payment of the amount of compensation is concerned, admittedly the offending vehicle belong to opposite party No. 1/ Respondent No. 2 Ranjit Kumar and the vehicle was covered under the policy of insurance with New India Assurance Co. Ltd. The offending vehicle bearing registration No. JH-02A-8225 was insured and was valid in between 27.2.02 to 26.2.03 which also includes the date of Accident.

9. Under the circumstances we find and hold that liability to pay the amount of compensation as awarded to the applicant Umesh Prasad Gupta the respondent No. 1 is upon the insurer namely the appellant the New India Assurance company Ltd. the insurer of the Trekker being registration No. JH-02A-8225.

10. Accordingly, we hereby direct the appellant the New India Assurance Co. Ltd. to pay the amount of Rs. 2,73,000/- (Rupees Two Lacks Seventy Three thousand only) being the modified awarded amount of compensation to the applicant/ respondent No. 1 along with interest calculated at the rate of 9% per annum on the principals amount from 25.6.2003 till the date of final payment. The appellant / Insurance Company is hereby directed to pay the awarded amount as soon as possible after deducting the amount already paid.

11. The instant Miscellaneous Appeal is disposed of with the aforesaid directions.