
(1995) 02 OHC CK 0011
In the Orissa High Court
Case No : M.A. No. 54 of 1993

United India Insurance Co. Ltd.

APPELLANT

Vs

Sarat Kumar Sahoo and Another

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1995) ACJ 1120

Hon'ble Judges : S. Chatterji, J

Bench : Single Bench

Advocate : A.K. Mohanty and S.N. Satapathy, for the Appellant; Jyoti Patnaik, Abani Das, S.K. Padhi, S. Parida and D. Mohapatra, for the Respondent

Judgement

S. Chatterji, J.—The United India Insurance Co. Ltd. as the appellant has challenged the award dated 29.10.1992 passed by the Third Motor Accidents Claims Tribunal, Puri, in M.A.C.T. Misc. Case No. 359 of 1987.

2. As to the facts of the case, the respondent No. 1, Sarat Kumar Sahoo, filed an application u/s 110-A of the Motor Vehicles Act, 1939, claiming compensation of Rs. 1,50,000/- on the allegation that on 30.5.1987 while he was standing by the side of a road, a truck bearing registration No. ORX 6778 rashly and negligently dashed against him and the front right side wheel of the truck ran over the left foot of respondent No. 1. The respondent No. 1 had undergone a permanent disability and the claim was made as such. The insurance company had contested the case challenging the allegations of the respondent. The learned Tribunal has made the award and allowed the sum of Rs. 75,800/- against the appellant with costs and interest.

3. Being aggrieved by the award, the insurance company has come to this court by way of appeal.

4. The learned counsel for the appellant insurance company has mainly argued on the point of quantum of compensation and also to the award of interest to the

extent as directed by the Tribunal that unless the claim is paid within a stipulated period of three months, the amount will carry further interest at the rate of 12 per cent per annum from the date of the claim. He has formulated his argument by referring to the decision in M/s. Pest Control (India) Pvt. Ltd. and another Vs. Ramanand Devrao Hattangadi and others, where the High Court of Bombay having considered the various reported decisions of different High Courts and also several decisions reported in international reports, made the principle, as observed in para 28 of the judgment. It has been recorded that from various authorities, it would be clear that the emphasis is on threefold principles, namely, (i) that the award should be moderate, just and fair and it should not be oppressive to the respondent; (ii) the award should not be punitive, exemplary and extravagant; and (iii) as far as possible similar cases must be decided similarly. The community of public at large may not carry the grievance of discrimination.

5. In order to justify his contention before this court, it is stated that the respondent No. 1 has not sustained such injury which will enable him to make out the claim to the tune of Rs. 80,000/- as awarded by the Tribunal and it is almost like a windfall, whereas the principles of law in making award in a similar case would not justify for such an award in favour of respondent No. 1. He has drawn the attention of the court to a decision in Gujarat State Road Transport Corporation Vs. Balusinh Nathusinh Parmar and Another, , wherein the Gujarat High Court upheld the award of Rs. 20,000/- by the Tribunal in case of injuries to the right hand ring finger and the last finger and the palm of the injured whereby he was bound to lose his two fingers, resulting in loss of grip power. Similarly, in a case in Madho Vs. Uttamvir Singh and Others, , the Madhya Pradesh High Court arrived at the conclusion as to the quantum for injury due to malunion of bones in both the legs, also muscular deformity of the right leg and the injured moved slowly without any support but with a limp and was unable to carry heavy articles. The injured remained under plaster for about 3 months and suffered 40 per cent loss of earning capacity. In such case, the Tribunal's award was enhanced to the tune of Rs. 25,000/-. In Kishanlal Vs. Asgarali and Others, , the Madhya Pradesh High Court has also considered the quantum as to the injury of a fracture of right foot resulting in shortening of the right leg by one and half inches and there was permanent disability of 65 per cent and enhanced the award in appeal to the tune of Rs. 40,200. Similarly, in Mariyayee alias Rajalakshmi Ammal Vs. M. Basheer and Another, , the Madras High Court considered the arm injury and compound fracture to the left upper arm and considering the treatment undergone and looking after the nature of permanent disability, the amount was enhanced to the extent of Rs. 25,000/-. It is observed that the deduction in respect of lump sum payment and other uncertainties of life would be more relevant in assessing the compensation awardable in the case of death rather than in a case of injury. There was, however, award of interest at the rate of 12 per cent per annum from the date of application till realisation. The attention of the court has also been drawn to another decision reported in

Maharashtra State Road Transport Corporation and Others Vs. Ramchandra Ganpatrao Chincholkar and Others, wherein a Division Bench of Bombay High Court considered the quantum regarding arm injury, where because of amputation of right arm from the shoulder award was made to the tune of Rs. 50,000/- and the High Court sitting in appeal did not interfere with the award.

5. By citing all the reported decisions, the learned counsel appearing for the appellant insurance company has tried to impress upon the court that the materials on record, the evidence adduced and the nature of injury so sustained by respondent No 1, would not warrant for award of an amount of Rs. 80,000/- and this quantum of compensation needs interference by this court sitting in appeal. Bearing in mind the principles to be followed and several factors to be considered as observed by such authorities, the salient features of the present case should not be lost sight of. In the instant case, according to the learned counsel for the appellant, the award is excessive in nature and it amounts to be punitive and exemplary and in similar cases the compensation awarded is within an amount of Rs. 50,000/- at best. The total compensation as awarded is out of proportion and interference by this court is necessary.

6. Learned advocate appearing for the respondent No. 1 has, however, taken exception to the filing of the appeal by the insurance company, by drawing the attention of the court to a decision of this court in National Insurance Co. Ltd. v. Magikhia Das 1976 ACJ 239 (Orissa). A Full Bench has found that in appeal u/s 110-D of the Act against the award of a Tribunal, the insurer is entitled to raise only pleas which could be raised by it before the Tribunal and the appeal would not be maintainable on grounds which could not be raised before the Tribunal by the insurer. This statutory provision is clear that an insurer who has been made a party to the proceeding before the Tribunal for the recovery of compensation can resist the claim only on those grounds mentioned in Sub-section (2) of Section 96 and it is not open to it to raise any other plea. She has also cited another decision in the case of The New India Assurance Company Ltd. Vs. Smt. Sulochana Sahu and Others, , where the single Bench of this court has held that the limits of liability of the insurer as fixed u/s 95 cannot be extended by the Tribunal and challenged by the insurer as to the compensation is covered u/s 96 (2). The view as taken by the Full Bench of this court is consistent with the Full Bench decision in United India Fire and General Insurance Co. Ltd. v. Lakshmi Shori Ganjoo 1982 ACJ 470 (J&K).

7. Having heard learned advocates of the respective parties as above, considering the materials on record in depth and details, it appears to this court that the accident and the injury are not in dispute. The maintainability of the appeal as argued has no merit inasmuch as the insurance company has contested the proceeding and is not taking any point beyond the scope of Section 96 (2) of the Act. The case-law as referred to by the learned advocate for the respondent No. 1 is obviously distinguishable in view of the facts of the present case. The maintainability of the appeal is beyond any doubt and such points are

obviously overruled.

8. With regard to the points raised by the appellant in this case, this court is of the view that the point of importance is the quantum of compensation. Admittedly, the petitioner has adduced oral and documentary evidence. There is no evidence from the side of the opposite party No. 2, appellant before this court. Be that as it may, the petitioner must succeed or fall upon his case without being assisted by the laches or lacuna in the case of the other side either apparent or real. The petitioner while admittedly sustaining injury has to prove the nature of the injury, so as to ask for compensation which is justiciable in law. In the present case, the evidence of the petitioner is that while he was standing by the side of the road, the offending truck bearing registration No. ORX 6778 came from his behind at high speed and without blowing horn and gave an impact on his body whereafter he fell down and front side right wheel of the truck ran over his left foot. He was admitted in Headquarters Hospital, Puri and he gained sense after three days. It is his detailed evidence that he had undergone several operations and he had spent a sum of Rs. 20,000/- to Rs. 25,000/- towards cost of medicines, cost of attendants and special diet, etc., including the conveyance charges. According to him, he had not been cured even while the evidence was taken. He has undergone a permanent disability. In support of his evidence, he has examined the doctor witnesses who have stated about the nature of the permanent disability. The learned Tribunal in considering all the evidence has concluded that the petitioner is out of employment because of his permanent disability due to the accident. After taking into consideration the nature of injury and percentage of disability, it cannot be said that he has thoroughly become useless and as such, his dependence on others cannot be disbelieved. Considering the nature of injury and the length of suffering continuously and the loss and multiplying the computation of loss of income and considering the similar nature as discussed in several authorities as quoted above, the Tribunal has found that the claimant being a helper is considered to be earning Rs. 7,200/- per annum. But taking into consideration the certificate granted by Dr. S.C. Mishra, Exh. 5 and considering the evidence of PW 6, the Tribunal felt that the earning capacity of the petitioner has definitely been impaired. He cannot earn what he was earning before the accident due to his disability to the extent of 60 per cent. Under such circumstances, his earning capacity must be impaired by 60 per cent and in view of the loss of income sustained by the petitioner and on proper calculation made as warranted by law, the compensation has been arrived at to the tune as awarded. The total claim of the petitioner for Rs. 1,50,000/- was negated and on proper calculation, the award as to compensation was made to the extent of Rs. 75,800/-. With great anxiety, this court has considered the grievance made by the insurance company as to quantum of compensation. True it is that in making an award, the Tribunal or the court, as the case may be, should not pass any award which would be punitive in nature or which would be excessive or exemplary in character. This should be moderate, this should be effective and this should be justified. These

principles are the guidelines and these are illustrative, but can never be exhaustive. Every case has its own peculiar feature and each case has its own dimensions and limitations. The nature of the injury, the disability and the position of the man in his life, his expectations should be considered in the proper perspective. This court considering the appeal on proper scrutiny does not find that the Tribunal has exceeded its limits and its award suffers from any illegality or from irrationality or from procedural impropriety. In that event, this court cannot substitute its own finding in place of the decision so arrived at. The reasons assigned by the learned Tribunal, in the view of this court, are well justified and this court is not inclined to interfere with the findings of the Tribunal as to the quantum. But however, this court finds that the ordering portion of the award where the interest has been awarded at 9 per cent per annum, but indicating that the said amount should be enhanced to 12 per cent, in case of default of payment within three months, appears to be in the nature of penalty. This does not appear to be justified and this part cannot be sustained. With this modification that the extent of payment of 12 per cent interest per annum after the expiry of three months is set aside, the interest will be flatly at the rate of 9 per cent per annum. The appeal is disposed of with such modification. There shall be no order as to costs.