

(1976) 05 OHC CK 0006

In the Orissa High Court

Case No : Misc. Appeal No's. 214 of 1973 and 3 of 1974

V. Jagannadh Rao and Another

APPELLANT

Vs

Debendranath Patnaik and Another

RESPONDENT

Date of Decision : 03-05-1976

Acts Referred:

Motor Vehicles Act, 1988 — Section 110B, 95(2)

Citation : (1976) ACJ 281

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : Y.S.N. Murty and S.S. Basu, for the Appellant; P.K. Misra, J.K. Mohanty, R.C. Patnaik, S.C. Routray and A.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—Opposite party No. 1, the owner of the truck involved in the accident in question, has preferred Miscellaneous Appeal No. 214 a: 1973, and opposite party No. 2, the Insurance Company, in which the trucking question had been insured for the relevant period has preferred Miscellaneous Appeal No. 3 of 1974, both against the award passed by the Second Motor Accidents Claims Tribunal, Cuttack in Misc. Case No. 3/73. Both the appeals were heard analogously as per the order of this Court dated 23.1.74 in Miscellaneous Appeal No. 214 of 1973.

2. The claimant is an I.P.S. Officer, and at the relevant time he was posted as the Superintendent of Police, Railways, Orissa. According to him on 12. 11. 71 he was going from Cuttack to Berhampur in his car ORC 1234 and he was himself driving his car. At a place near village Damonda on the National Highway between Bhubaneswar and Khurda the claimant saw that the truck bearing No. APS 635 was coming from the opposite direction at a very high speed with load on it. As the truck was moving right in the middle of the road the claimant signaled the truck from a distance to go a little to its left, but the driver of the truck did not care for the said signal.

When the claimants, car came near the truck, it (the truck) suddenly swerved to its right as a result of which it dashed against the claimants' car due to which the claimants car was tossed out of the road and it fell in the vacant land about 25 feet away from the road. Due to the said accident the claimant was thrown out of his car, lost his senses and sustained various grievous and simple injuries on his person, with the result that he was hospitalised in the S.C.B. Medical College Hospital, Cuttack for a long time.

Some of the injuries sustained by him in the said accident disabled and crippled him permanently, and he had to be operated upon in the said hospital. Even after his discharge from the said hospital he had to undergo treatment for the injuries sustained by him and had to remain on medical leave for a long time. Due to all that he not only suffered physical pain but had to pass through terrible mental agony, and had to spend lot of money for his treatment. The claimant was a very active and healthy man with prominent record in sports and games, but because of the said accident he became weak and invalid to pursue his interest in sports and games and could not perform his duties as a police officer in a very efficient manner. His longevity too was adversely affected on account of the said accident.

Towards compensation for bodily injury and incidental expenses and loss the claimant has claimed Rs. 30,000/- and for the damage caused to his car and loss of T. A. he has claimed Rs. 10,000/-.

3. According to opposite party No. 1, the owner of the vehicle (the Appellant in Misc. appeal No. 214/73), the truck was moving at a reasonable speed, and the driver in driving the same was neither rash nor negligent in any manner. The claimant was driving his car rather very fast and in a rash and negligent manner, and he alone was entirely responsible for the said accident. At the place and time of the accident the truck was moving on its extreme left of the road, and the claimants' car coming at a high speed from the opposite direction dashed against the truck. It is stated that claimant has not become invalid due to the said accident, and his longevity has not at all been affected. All the allegation made by the claimant against the truck driver have been denied, and the claimant has been asked to prove the same.

4. Opposite party No. 2, the Insurance Company (the Appellant in Misc. Appeal No. 3 of 1974) in its written statement has similarly denied all the claimants' allegations, and has supported the case put forward by opposite party No. 1. It also states that the claims for compensation on the different heads are excessive.

5. The Tribunal has mostly accepted the claims preferred by the claimant on different heads, and out of the total claim of Rs. 40,000/- preferred by the claimant the Tribunal has awarded a compensation of Rs. 39,000/- to be paid with interest at 6 per cent per annum from the date of the application till the date of payment of the said amount, and it has also awarded a consolidated cost of Rs. 400/- for the proceeding.

6. The claimant has been examined as P.W. 1. P. W. 2 is the son of the claimant

and he was traveling in the same car when it met with the said accident. P. W. 3 is the doctor who treated P.W.I in the S.C.B. Medical College Hospital, and P.W. 4 is the Sub Inspector of police who investigated the case arising out of the said accident.

Two witnesses were examined on behalf of the opposite parties. O.P.W. 1 was driving the said truck when the accident took place and O.P.W. 2 is the Motor Vehicle Inspector who inspected both the vehicles and the spot where the accident took place.

7. The counsel appearing for the Appellants in both the appeals at first urged that the finding of the court below that the accident took place due to the rash and negligent driving of the truck could not be substantiated on the evidence on record. The claimant is a responsible police officer in the Indian Police Service, and at the relevant time he was posted as Superintendent of Police, Railways, Orissa. He (P.W.I) has testified to the fact that at the place where the accident took place the road was about 20-25 feet in breadth and it was under repair but the road was free and there was no obstruction on it. He was driving his car at a speed of 20-25 kilometers per hour on the left side of the road leaving about 3 feet from the left edge of the road, and the truck was coming from the opposite direction at a high speed. When the truck came near the claimants' car, it all of a sudden turned a little to its right and dashed against the car as a result of which the car was thrown out to its left to the vacant fields at a distance of about 25 feet away from the road, and the claimant was thrown out of the car and he instantaneously became unconscious and remained so for a long time. From the place of accident he was taken to the Khurda Hospital by another vehicle and from there he was very soon sent in an ambulance to the S.C.B. Medical College Hospital at Cuttack where he remained for nearly about two months as an indoor patient for the treatment of the several injuries sustained by him in the said accident. Hereafter also he was attending the Hospital regularly for at least one month more. In the Hospital his right patella had to be removed by a surgical operation as a result of which he could not bend his leg, climb steps and walk properly. He also could not run or climb steps. He was sitting with great physical pain. He has deposed about his expenses on treatment and on other heads which he incurred on account of the said accident. He has also claimed Rs. 10,000/- for the damages caused to his car in the accident.

His grievances, that the truck was moving at a very high speed and that at the place of the accident it swerved to the right and dashed against his car, could not be successfully assailed in cross examination. The suggestion to him, that he was driving his car at a high speed as he was in a hurry to reach Berhampur, has been stoutly denied by him.

P.W. 2 the son of P.W. I was also in the said car. He too corroborated his father's (P.W. 1) evidence almost on all material and important particulars. He too has denied the suggestion that his father was driving the car at high speed. The consistent evidence of these two eye witnesses on the above aspect of the

matter has not been successfully assailed in cross examination. I have no convincing reason to discard the consistent evidence of P.W's 1 and 2 to the effect that at the relevant time the truck in question was moving at a high speed.

8. The evidence of P. Ws. 1 and 2 to the effect that at the place of occurrence the truck swerved to its right as a result of which it dashed against the claimants' car is supported by the report of the Motor Vehicles Inspector of Bhubaneswar, which has been exhibited as Ext. A/1 on behalf of opposite party No. 1. From the rough sketch in the said report indicating the position of the truck and the car at the place of occurrence and the details of measurement given therein it is evident that the truck at the place of occurrence certainly swerved at least 2 1/2 feet towards its right. Ext. A/1 shows that the edge of the road on the left side of the truck was 5 feet from the rear left inner wheel whereas it was 8 feet from the front left wheel of the truck. The front wheel of the truck was 10'-6" and its rear right outer wheel was 13 feet from the right side edge of the road. O.P.W. 1, the driver of the truck stated that he had stopped the truck at the spot where the accident took place. The truck was a loaded truck and it could not have moved to its right; due to the accident. These facts and the above measurements clearly show that the truck swerved at least 2½ feet to its right at the place of the accident. The above facts corroborate the evidence of P. Ws. 1 and 2 that the truck swerved to its right at the place of the accident and dashed against the claimants' car. It is also seen from Ext. A/1 that the front wheel of the truck at the time of the accident was about 10'-6" away from its right side edge of the road and so the mudguard and the bumper of the truck were less than 10 feet away from the right edge of the road. An Ambassador car is about 6' and odd in width. So the driver of the truck who had more than 5 feet of the road on its left side should have moved a little to its left side in order to allow the car coming from the opposite direction to safely pass in its own way on the road. But from the facts stated it is quite evident that instead of moving to its left it moved to its right when the car came near the truck. A man driving a car can never anticipate that a vehicle coming from the opposite direction with sufficient space on that side of the road, would swerve to its right, particularly at the place where the car would be crossing the vehicle. So it was not expected of the claimant to move his car to its left at that particular place. There is nothing on record to show that there was any obstruction on the road on the left side of the truck at the place of the accident which necessitated the truck driver to swerve the truck to its right side. On the above considerations I am convinced that only because the truck swerved to its right at the place of the accident it struck against the claimants' car coming from the opposite direction and the accident took place due to the said act on the part of the truck driver. So I am convinced that the conclusion of the court below that the accident took place due to the rash and negligent act of the truck driver is perfectly correct and justified.

9. The learned Counsel appearing for the Appellants, in both the appeals next urged that the court below has assessed the compensation on the different heads merely on conjectures and without any tangible basis, and that being so, the

order for the payment of compensation was liable to be set aside. In this connection it was further submitted that the claimant did not adduce proper evidence to substantiate his claims on the different heads and so the claimant would not be entitled to any compensation in this case, as assessment of the same would be a difficult proposition for the court on the materials available on record.

10. The claimant has claimed compensation on the following heads:

- (1) For mental shock and physical pain Rs. 8,000/-
- (2) For loss of pleasure in life. Rs. 6,000/-
- (3) For loss of longevity Rs. 5,000/-
- (4) Expenses in treatment, food, medicine attendance etc. Rs. 2,000/-
- (5) Future probable expenses in the treatment food, medicine, attendance etc. Rs. 6,000/-
- (6) General and other miscellaneous damages and loss of T.A. etc. Rs. 3,000/-
- (7) For damage to the car and consequential loss of T.A Rs. 10,000/-

11. The court below had allowed in full the amounts claimed under item Nos. (1) and (2) mentioned above. The court below finds that the estimation of compensation under item No. 1 is quite conservative, and his claim under item No. 2 is not much in view of the nature of the accident and the injuries sustained by the claimant in the said accident.

12. On the evidence on record it is well established that due to the accident in question the car in which the claimant was moving was thrown 25 feet away from the road and by that the claimant was thrown out of the car he lost his senses and sustained various grievous and simple injuries on his person. It is also established on the evidence of P.W.3, the Professor of Orthopedist, S C.B. Medical College Hospital, Cuttack, that even at 8-30 p. m. when the claimant was admitted into the medical college hospital (the accident took place by about 4-30 p.m.; he still was unconscious due to his head injury. According to P.W 3 the claimant was admitted in the Hospital with the following injuries:

(i) Lacerated injury on the right side of the head (ii) Fracture of the right knee patella (iii) Dislocation of the left hand wrist (iv) Multiple bruises and injuries all over the body (v) Sprain on the spinal column P.W. 3 has testified to the fact that the claimants' fractured patella was removed by surgical operation. He remained in the hospital for more than 1\$ months, and even thereafter also he had-to attend the Hospital for quite some time as an outdoor patient. P.W. 3 has further stated that due to the removal of the right patella of the claimant, it will not be possible for him to bend his knee or run, jump or walk fast. P.W. 3 further states that the removal of the patella also results in permanent disability. From the nature of the accident and the injuries sustained by the claimant it is quite

evident that the claimant very luckily, escaped only with the aforesaid injuries. The court below had the advantage of seeing the claimant in person. Even after two years of the accident, when the claimant was examined in the court the court found that P.W. 1 was limping and was walking with great difficulty. Considering the above facts, the compensation of Rs. 8,000/- awarded under item No. 1 cannot be held as unreasonable.

13. The Court below has allowed in full the claim of Rs. 6,000 made by the claimant on account of his loss of pleasure in life under item No. (2). The claimant was 48 years old when the accident took place. The claimant is in police service and he has adduced convincing evidence to show that in his student career he was a good sportsman and in his service career also he was taking active interest in sports and games. He has further deposed that after the accident he became physically weak and lost zeal and enthusiasm in life due to the infirmities in him caused by the accident. It is evident from P. W. 1 's deposition that he was not able to walk about, run Ox- climb heights or sit comfortably or bend his knee. P.W. 1 has further stated that because of his physical handicap and infirmities he could not be promoted to the rank of Deputy Inspector General of Police in 1972, by which time he was expecting promotion to that rank. P.W. 3, while being examined in August, 1,973 stated P.W. 1 even till then was not fit for normal life and that due to the removal of the patella the claimant became a permanently disabled person. In view of the permanent disabilities and infirmities caused to the claimant due to the said accident it is quite evident that he can no longer take interest in sports and games nor can he lead the type of active life which he was leading before the accident. Moreover, he has to bear all these physical disabilities and infirmities for the rest of his life. Considering all that his claim of Rs. 6,000 on this account is justified.

14. The court below has allowed in full the claim of Rs. 5,000 on account of the claimants' loss of longevity due to his physical and mental sufferings on account of the accident. Due to the said accident the claimant has become permanently infirm as stated above, and he is no longer fit to lead the life of a normal healthy sportsman as before. He can no longer take proper physical exercise, enabling him to maintain good health for a long time. Some amount of lingering mental depression is inevitable due to the said accident and the permanent physical infirmities caused to him thereby. With the advancement of age, the sufferings due to the said infirmities will increase. All these must have affected and shall continue to affect adversely the life span of the claimant. Considering all these I am of the opinion that the claim for compensation of Rs. 5,000/- on account of loss of longevity of the claimant cannot be said to be excessive.

15 The fourth item of claim is for Rs. 2,000 on account of past expenses incurred by the claimant on his treatment. As against this claim,, the court below has awarded only Rs. 1,000/-. Even if it is accepted that the claimant being an I.P.S. Officer the entire expenses for his treatment and medicine were borne and/ or paid by the Government amount of extra expense from one's own pocket was

inevitable in such matters. He was in the hospital for more than 1 1/2 months He had to attend the hospital for nearly one month thereafter as an outdoor S Though the claimant has not produced any definite evidence regarding the details of his expenses on the above amount one can on the facts and circumstances the case, reasonably allow a lump sum of Rs. 500/ on this account.

16. The court below has allowed in full the claimants claim of Rs. 6,000/- under item (5) on account of future probable expenses for treatment, food, medicine etc. On behalf of the Appellant it is urged that no compensation on this account should be paid as the claimant has not adduced any evidence that he was still undergoing any treatment or is likely to undergo any treatment in future for his said physical disabilities. In view of the permanent nature or the claimant's disabilities, as stated above, and the fact that the claimant was not capable of leading a normal life it is evident that with the passing of time and age the claimant will require special treatment, attendance and aid for and due to the disabilities and infirmities caused to him in the said accident. So long he is in service, his expenses on that account may to some extent be met by the Government, but after retirement he has to bear most part of his expenses on this account. The removal of his patella and his permanent disability due to the same will certainly cause him various difficulties in his old age, involving him in additional expenses on this account. A man who was found limping and was not able to walk freely or bend his injured leg even after 2-3 years of the accident, would as can be reasonably expected, require the assistance or aid of some body else, or any mechanical device to help him to move about for his existence in life. He is also expected to spend some money over treatment of his infirmities in his old age. Considering the facts and circumstances of the case one can reasonably grant a compensation of Rs. 4,000/- on this account.

17 The claimant has claimed and the Tribunal has awarded Rs. 3,000/- for general and other miscellaneous damages and loss of T.A. etc. Under item (6) of his claim. The claimant has not given any basis or data for his claim on this head. However it is well known that out of the traveling allowance, officers save some amount to maintain their cars. Moreover, when the officers are on tour they get daily allowance to meet their own expenses for food on the days they remain out, and that way they save the amount which they would have spent on that account had they remedied in their head-quarters. The claimant being a police officer was and is expected to go out on tour very frequently, undoubtedly for a number of months after the accident the claimant could not have gone out on tour, and because of his infirmities and disabilities it will not be possible for him to go out on tour as frequently as he was going before the accident and to places not easily accessible by suitable vehicles. So he must have already sustained and shall continue to sustain some loss on this account till his retirement. Thus on this account he can reasonably be granted a compensation of Rs. 2,000/..

18. The court below has granted Rs. 10,000 on account of damage caused in the said accident to the claimants car. The claimant in his claim petition has claimed

the above amount "for the damage caused to his car and loss of T. A.". As stated above, Rs. 2,000/- has been awarded on account of loss of T. A. The claimant has not proved the actual expenses he incurred in repairing his car. He, as stated by him, had not repaired the car till the date of his deposition (6.8. 73). He however, stated that by that time he had spent Rs. 5,000/- on purchase of motor parts for repairing his car. It is not known why the damaged car was not repaired till 1973 and was kept at Baripada all the time. An estimate of repair Ext. 6, prepared by a garage owner of Cuttack has only been produced. It has not been substantiated by the persons who prepared the same or by any other person on his behalf. The person who allegedly prepared Ext. 6 was living at the time of the hearing of the case. Moreover, the fact that the car was lying unprepared at Baripada till 1973 shows that the garage owner who allegedly prepared that estimate at Cuttack was not entrusted with the work of repairing the said car. It is also not known if the claimant received any compensation from any other source for the damage caused to the said car in the accident. By now the car must have been repaired, and some definite data may now be available to assess the compensation on this head on some dependable basis. As now there is no sufficient material on record to assess the compensation on this account, I deem it proper to direct the court below to deal afresh only with this particular aspect of the matter on allowing both the parties proper opportunities to adduce evidence in this matter if they so desire. So the Compensation-of Rs. 10,000/- assessed by the court below on this head is set aside and this particular matter is referred to the court below for fresh assessment of compensation in accordance with law and the observation and directions given above. If the Tribunal finds that any compensation is to be paid on this account it shall pass all necessary orders as contemplated u/s 110-B of the Act. The court below must take up the hearing of this matter very soon on notice to both the parties and dispose of the same in accordance with law within as short a time as possible.

19. The total of the compensation amount on items (1) to (6) mentioned in paragraph 10 above, as assessed afresh by this judgment, comes to Rs. 25,500/-. The compensation amounts assessed for items (1) (2) and (4) are not liable to any deduction on account of lump sum payment of the same, as the said amounts are awarded for expenses already incurred by the claimant and so the element of uncertainty in future on which consideration mostly some deduction is made, is absent in these cases. There is however an element of uncertainty in respect of compensation assessed for each of the items (3), (5) and (6) for these relate to expenses to be incurred in future. So from the total compensation amount on these three items, which comes to Rs. 11,000/- the usual deduction of 1/6th due to uncertainties can be made. Thus the net compensation on these items comes to Rs. 9,166/-. So the claimant is entitled to full compensation under items (1), (2) and (4) that is Rs. 14,500/- and he is entitled to the reduced compensation under items (3), (5) and (6) that is Rs. 9,166/-. Thus the net total compensation amount, to which the claimant is entitled to Rs. 23, 666/-. On the said amount, the claimant is entitled to get interest at the rate of 6

per cent per annum to be calculated from the date of his filing the claim petition till the realisation of the same u/s 95(2) of the Motor Vehicles Act, the Insurance Company has to pay the said compensation amount with interest, as stated above to the claimant.

20. Rs. 400/- awarded by the court below towards cost of the proceeding has also to be paid to the claimant and that amount be paid by the owner of the truck (Appellant in Misc. Appeal No. 214/73).

21. The appeals are partly allowed, but in the circumstances there will be no order as to costs of this appeals. The L.C.R. be sent back immediately.