

ORISSA HIGH COURT : CUTTACK.

M.A.C.A. NO.1057 OF 2005

From an award dated 13.9.2005 passed by the 2nd.Addl.District Judge-Motor Accident Claims Tribunal, Cuttack, in M.V.Misc. Case No.1045 of 1998

Abhaya Kumar Behera ... Appellant

-Versus-

Superintendent of Police,
Police Motor Transport,
Buxi Bazar, Cuttack

...

Respondent

For Appellant : Dr.Tahali Charan Mohanty
M/s.Jitendra Mohanty,
Sanjib Pattanaik,A.Rout,
Prasanta Kumar Singh.

For Respondent : Addl.Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA

Heard and disposed of on 29.7.2011

B.N.Mahapatra, J. This is an appeal under section 173 of the Motor Vehicles Act,1988 (hereinafter referred to as the 'Act') filed by the claimant-appellant challenging the award dated 13.9.2005 passed by the 2nd.Addl.District Judge-Motor Accident Claims Tribunal Cuttack (hereinafter referred to as the 'Tribunal') in M.V.Misc.Case No.1045 of 1998 on the ground that the amount of compensation awarded by the Tribunal is at lower side.

2. The facts of the case are that on 17.1.1998 at about 4.00 P.M. while the claimant-appellant was proceeding towards O.M.P.Square on his bicycle, a Police Van bearing Registration No.OSU-3043 being driven in a rash and negligent manner dashed against the claimant-appellant, as a result of which he fell down on the road from his bicycle, sustained injuries and became senseless. He was immediately taken to the Police Hospital for his treatment and thereafter shifted to S.C.B.Medical College Hospital, Cuttack for better treatment. In the said accident, the claimant-appellant sustained fracture injuries on his hand and leg. The claimant-appellant underwent treatment in the said hospital as an indoor patient from 19.1.1998 to 5.2.1998.

With these facts the claimant-appellant filed a claim petition before the learned Tribunal claiming compensation of Rs.3,50,000/-.

3. The respondent denied any accident to have taken place, and took the plea that the accident, if any, was due to the negligence of the claimant.

4. The claimant examined three witnesses including himself as P.W.1 and produced eight documents marked as Exts.1 to 8 in support of his claim.

Though the respondent examined one witness as O.P.W.1, who is the driver of the offending vehicle, no document was produced on behalf of it.

5. The learned Tribunal after taking into consideration both oral and documentary evidence came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle and the claimant-appellant is entitled to get compensation of Rs.18,000/- and directed the opposite party to pay the said amount with interest at the rate of 6% per annum from the date of filing of the application, i.e., 27.11.1998.

6. According to the appellant, due to the accident he sustained injuries on his right fore-arm. Dr.T.Mohanty, learned counsel appearing on behalf of the claimant-appellant submits that as per the report of the specialist in Orthopedic the claimant has sustained 50% disability. Therefore, the amount of compensation should not have been less than Rs.2,07,200/-. Dr.Mohanty, learned counsel for the claimant-appellant further submits that since the mater is of the year 1998 and the claimant-appellant is suffering a lot, the same may be disposed of in the manner and spirit in which the motor vehicle accident claim cases are disposed of in Lok Adalat, to which the learned Addl. Standing Counsel has no objection.

7. Learned Addl. Standing Counsel appearing for the State submits that there is no infirmity or illegality in the order of the

Tribunal and the certificate of disability produced by the claimant was not proved before the Tribunal and the same has not been issued by a Medical Board. It is further submitted that the certificate of disability cannot be accepted since it is not a genuine document.

8. The only dispute in the present appeal is as to whether the amount of compensation awarded by the Tribunal is just compensation.

9. It is not in dispute that in the accident the claimant-appellant sustained injury in his right fore-arm.

Considering the submissions made by the learned counsel for the parties and going through the impugned order and evidence on record this Court feels further consolidated compensation of Rs.15,000/- in the present case would be just and proper.

10. In view of the above, the Respondent is directed to pay a further consolidated sum of Rs.15,000/-(Rupees fifteen thousand) to the claimant-appellant within a period of eight weeks from the date of receipt of a copy of this order. The entire amount of Rs.15,000/-(Rupees fifteen thousand) be deposited before the Tribunal. On deposit of the said amount, the Tribunal shall disburse the same to the claimant-appellant on proper identification.

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B.N.Mahapatra,J.

The 29th July, 2011/Bose.