

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.668 of 2019

Santosh Patra

....

Appellant

Mr. P.K. Mishra, Advocate

-versus-

Prakash Kumar Patra and another

....

Respondents

Mr. S.A. Ali, Advocate for Respondent No.2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

04.08.2022

Order No.

06.

1. Heard Mr. P.K. Mishra, learned counsel for the Appellant-claimant as well as Mr. S.A. Ali, learned counsel for the Respondent No.2-Insurance Company.

2. Present appeal by the claimant is directed against the judgment dated 05.09.2019 of learned 4th MACT, Cuttack in M.A.C. Case No.97 of 2017/30 of 2018 wherein learned Tribunal has refused to grant any compensation on the claim of the injured-Appellant.

3. The case of the Appellant as the claimant before the learned Tribunal is to the effect that on 14.8.2016 in the night around 10 p.m. when he was coming in the motorcycle bearing Registration No.OD-21-B-3869 as a pillion rider, which was driven by his brother-in-law, the front wheel of the motorcycle stuck hard in a ditch suddenly near old Railway station of Paradeep due to rash and negligent driving of its driver. At the time of accident, it was

raining heavily and the road was full with rain water. As a result of the said accident, the claimant-Appellant fell down from the motorcycle and sustained grievous injury and became senseless. He was taken to local CHC and then shifted to Ashwini Hospital, Cuttack where he remained for two days. Thus for the injury sustained in the accident, he claim compensation to the tune of Rs.5 lakhs.

4. The owner of the motorcycle, who is own brother of the claimant, did not dispute the accident. A Police case was registered on 24.9.2016 as Paradeep P.S. Case No.154/16 and the charge-sheet was submitted against the driver of the offending motorcycle under Sections 279/337/338 I.P.C. and the injury report was also prepared. Such documents were adduced in evidence in support of the claim of the injured before the learned Tribunal under Exts.1 to 5. No evidence was adduced either from the side of the insurer or the owner.

5. Learned Tribunal upon adjudication disbelieved the case of the Appellant mainly on the ground that the FIR was lodged after 40 days of the accident and the delay in lodging the FIR was not explained properly. Further the evidence of the eye-witness, P.W.2 is not found credible on the ground that it is not possible on the part of a normal man to see the accident in the rainy night from a distant of 30 to 35 ft. The learned Tribunal accordingly refused to grant any compensation and dismissed the claim application with nil award.

6. Mr. P.K. Mishra, learned counsel for the Appellant-claimant while challenging such finding of the learned Tribunal submits that since the claimant being the injured was not in a position to lodge the FIR and the informant – his brother (Respondent No.1) was engaged with his treatment (the injured), the delay in lodging the FIR is obvious and thus cannot be a ground to disbelieve the case of the Appellant. He further submits that when the owner as well as the accused-driver did not dispute such accident and no evidence was adduced from the side of the insurer, such a finding of the learned Tribunal is not sustainable.

7. Mr. S.A. Ali, learned counsel for Respondent No.2-Insurance Company submits that no flaw is there in the finding of the learned Tribunal since the owner and driver are the relatives of the injured being his own brother and brother-in-law respectively, who for obvious reasons would not speak against the claimant, and the learned Tribunal has rightly disbelieved their version.

8. Upon hearing both parties and considering the rival submissions advanced, it is seen from the certified copy of the evidence of P.Ws.1 & 2 and other exhibits that what has been stated by the claimant in his evidence is corroborated with the statements of P.W.2. Said P.W.2 is not a relative of the claimant. The statements of P.W.2 as an eye-witness has been disbelieved by the learned Tribunal on the ground that it is not possible on the part of a normal man to see the same from a distant to 30 to 35 ft. on a rainy night. It is not always true to say so. There are various other factors also like availability of light at the spot and density of rain etc. Furthermore, those statements with regard to the cause

of accident are found corroborated in the Police investigation as the ultimate charge-sheet has been submitted against the accused driver. The most important fact is that the owner of the offending vehicle admits the accident in support of the claim and such reason assigned by the Tribunal that the story cannot be believed for the delay in lodging the FIR, is not found justified. It is for the reason that in the FIR itself, the informant – the brother of the injured, has explained that as they remained busy in treatment of the injured, the delay occurred in lodging the FIR. It also needs to be mentioned here that the discharge certificate of Ashwini Hospital, Cuttack obtained under the RTI Act reveals that the claimant was admitted on 16.8.2016 with alleged case of a road traffic accident and sustained such injuries as per the injury report under Ext.5/1 including fracture injury and head injury.

9. Therefore, when all prima facie materials are found tilted in favour of the claimant to support his case, such analysis made by the Tribunal to disbelieve the case of the claimant only for the reason of delay in lodging the FIR and the doubt about P.W.2 to see the accident is not found justified. Accordingly, such finding of the learned Tribunal under Issue Nos.1 & 2 to disbelieve the alleged negligence and accident is set aside. It is held that the claimant-Appellant sustained injuries in the accident dated 14.8.2016 involving the offending motorcycle bearing Registration No.OD-21-B-3869.

10. Next coming to the question of quantum of compensation, the injuries sustained by the claimant like head injury, fracture of right colour bone, right elbow are grievous in nature besides other

simple injuries. His period of treatment from 15.8.2016 to 23.8.2016 and again from 6.9.2016 to 11.9.2016 as indoor patient as well as his subsequent checkups in the Neurology Department of SCB Medical College & Hospital, Cuttack where it is claimed that he spend medicinal expenses to the tune of Rs.1,90,853/- are found established on record. In the opinion of this Court, an amount of Rs.2,00,000/- would suffice the purpose of expenses including medical expenses, attendance cost, etc. In absence of any specific evidence with regard to income of the injured, considering the period of his treatment, a further sum of Rs.25,000/- is granted towards loss of income taking the deceased as an unskilled labourer. The claimant is also found entitled for Rs.25,000/- towards pain and suffering is granted. Thus a total sum of Rs.2,50,000/- is granted towards compensation in favour of the Appellant payable by the insurer-Respondent No.2 since the validity of the Insurance Policy in respect of the offending vehicle on the date of accident is not disputed.

11. In the result, the Appellant-Insurance Company is directed to pay the total compensation amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) along with interest @6% per annum from the date of filing of the claim application within a period of ten weeks from today; where-after the same shall be disbursed in favour of the claimants. It is further directed that 50% of the total amount including interest shall be kept in fixed deposit in any nationalized Bank for a period of six (6) years from the date of such deposit.

12. The copies of the documents as filed by both the parties in course of hearing are kept on record.

13. With aforesaid observations and directions, the appeal is disposed of.

(B.P. Routray)
Judge



B.K. Barik