Uper Singh and Another Vs Dibyendu Biswas

Court: Calcutta High Court

Date of Decision: Jan. 8, 1986

Acts Referred: Bengal Motor Vehicles Rules, 1940 â€" Rule 238
Motor Vehicles Act, 1939 â€" Section 110A(1)

Citation: (1987) ACJ 464

Hon'ble Judges: Monoranjan Mallick, J; Ganendra Narayan Ray, J

Bench: Division Bench

Advocate: Biswajit Choudhury, for the Appellant;Anil Kumar Bhandary, for the Respondent

Final Decision: Allowed

Judgement

Ganendra Narayan Ray, J.
This appeal arises out of the judgment and award dated 30th July, 1977 passed by the learned Judge, Motor

Accidents Claims Tribunal for Calcutta and 24 Parganas in M.A.C. Case No. 142 of 1973.

2. Uper Singh and the New India Assurance Company Ltd. who are the objectors in the said accident case before the Tribunal, are the Appellants

in the instant appeal. On an application for compensation u/s 110-A(1)(a) of the Motor Vehicles Act, 1939 made by the claimant-Respondent.

Dibyendu Biswas, the said M.A.C. Case No. 142 of 1973 was started. The claimant-Petitioner contended that because of rash and negligent

driving of a lorry bearing No. WMK 447 belonging to the Appellant, Uper Singh, the said claimant-Petitioner sustained serious injuries on his feet

and ankle joint, resulting in amputation of half of his left feet as a result of which the claimant has been crippled. It appears that the claimant is an

employee in, the Telephone Department of the Government of India and at the relevant time he had been drawing a salary of Rs. 605/- per month.

It also appears that the claimant is a technical personnel and he passed L.C.E. examination. After considering the evidence adduced by the parties,

the learned Judge came to the finding that the said accident occurred due to rash and negligent driving of the said lorry and the claimant Petitioner

was entitled to get compensation commensurate with the injuries sustained by the Petitioner and the salary he had been drawing at the relevant

time. The learned Judge has awarded a total compensation of Rs. 66.800/- (Sic. Rs. 67,800/-) in the following manner.

For loss of pay ... Rs. 800/-

For pain and ... Rs. 3.000/-

suffering

For cost of treatment... Rs. 6,000/-

etc. For permanent

partial

disablement ... Rs. 10,000/-

For transport ... Rs. 30,000/-

For attendant ... Rs. 18,000/-

3. Mr. Chowdhury, learned Counsel for the Appellants, has submitted that in view of the fact that the learned Judge on a consideration of the

evidence has awarded specific sums for different items of compensation, the Appellants do not intend to challenge such award except the award

granted on two counts, viz., loss suffered by the claimant-Petitioner from additional expenses on account of transport amounting to Rs. 30,000/-

and also loss suffered by the claimant-Petitioner for engaging an attendant assessed at Rs. 18,000/-, totalling to Rs. 48,000/-. Mr. Chowdhury has

incidentally submitted that for cost of treatment also Rs. 5,500/- should have been awarded and not Rs. 6,000/-. Although there is some force in

the contention of Mr. Chowdhury the difference is very paltry and on the basis of the evidence it cannot also be said that Rs. 6,000/- should not be

awarded. We do not therefore want to interfere with the award granted on account of cost of treatment.

4. So far as the aforesaid sum of Rs. 48,000/- on account of additional expenses to be incurred on account of transport and for maintaining an

attendant is concerned. Mr. Chowdhury has submitted that the claimant-Petitioner has not pleaded the special damages on account of the said two

factors and in his evidence also he has not indicated as to whether any attendant has been maintained by him and there is no evidence about the

cost being incurred by the claimant Petitioner on account of engaging an attendant. Mr. Chowdhury has, therefore, submitted that the learned

Judge has awarded a sum of Rs. 18.000/- towards cost of attendant out of his imagination without any rational basis. Mr. Chowdhury has also

contended that so far as the cost of transport of Rs. 30.000/- is concerned, the learned Judge has also not given any indication as to how the said

sum can be awarded in favour of the claimant Petitioner. He has indicated that the claimant-Petitioner has also not pleaded the special damage on

account of loss being suffered by way of additional expenses of transport because of the accident suffered by the Petitioner. That apart, in his

evidence, the claimant-Petitioner has also not indicated as to what is the actual loss being suffered by him because of additional expenses being

incurred by him on account of transport. He has, therefore, submitted that the said amount of award for Rs. 30,000/- on account of transport must

be held to be arbitrary and without any rational basis.

5. Mr. Bhandary, learned Counsel appearing for the Respondent claimant-Petitioner, has, however, submitted that all the provisions of the CPC

are not applicable in the proceedings under the Motor Vehicles Act and under Rule 238 (?) of the Bengal Motor Vehicles Rules, 1940, some

provisions of the CPC have been made specially applicable. Mr. Bhandary has submitted that the claimant-Petitioner has given evidence to the

effect that because of the accident he has been permanently disabled and crippled for which he has to engage a person in the house. Mr. Bhandary

has also submitted that although the remuneration of the attendant engaged by the claimant-Petitioner has not been indicated in the evidence, the

court can take a judicial notice of the fact that if a helper is to be engaged the claimant-Petitioner is bound to incur reasonable expenses on that

account and if the cost for such attendant engaged for the rest of his life has been assessed at Rs. 18,000/-, it cannot be said that the said amount is

unreasonable or without any basis whatsoever. Mr. Bhandary has also contended that the claimant-Petitioner has stated in his deposition that

because of the accident suffered by him, it is no longer possible for him to move in the public vehicles and for attending office he is to go either by

mini bus or by taxi and hiring of taxi for such purpose is frequent. Mr. Bhandary has drawn attention of the court that the claimant-Petitioner is a

resident of Paikpara area and he is to attend his office in Telephone Bhavan which is quite far off from the place of residence. He has, therefore,

submitted that in the aforesaid circumstances, the learned Judge is not unjustified in assessing the quantum of compensation on account of

additional expenses being incurred by the claimant-Petitioner on account of transport. He has submitted that the assessment of the sum of Rs.

30,000/- for the rest of the life of the claimant-Petitioner must be held to be reasonable, more so, if increasing cost of transport is taken note of by

the court.

6. After hearing learned Counsel for the parties, it appears to us that the specific rules of pleading as contained in the CPC need not be adhered to

in the proceedings before the Accidents Tribunal. There is no manner of doubt that the claimant-Petitioner is to lead proper evidence on the basis

of which the award of compensation can be objectively assessed. It is necessary for the claimant-Petitioner to lead evidence for each item of

compensation so that there are materials on the basis of which the court can assess such compensation on a rational basis. It is true that the

claimant-Petitioner in his deposition has stated that because of his physical condition he requires assistance of a person and he has engaged a

person in his house. But unfortunately the claimant-Petitioner has not indicated what amount of expenditure is being incurred by him for engaging

such helper. In the aforesaid circumstances it becomes very difficult for the court to determine the amount of compensation on the score of

engaging an attendant objectively. We are, therefore, not inclined to accept the assessment made by the learned Tribunal on the score of engaging

an attendant at Rs. 18,000/-. But keeping in view that for engaging any helper, the Petitioner is bound to incur some expenditure, we feel that ends

of justice will be best met, in the facts of the case, if we assess compensation on the score of engaging an attendant at Rs. 10,000/-. So far as

transport is concerned, the same difficulty arises. Although the claimant-Petitioner has stated in his deposition that he cannot travel by the public

buses and he has to attend office either in a mini bus or by a taxi, but he has not indicated the amount of expenditure being incurred by him every

month for that purpose. In the absence of such specific evidence, it becomes difficult for the court to determine the additional expenses being

incurred by the claimant-Petitioner on account of transport objectively and as such the amount assessed on the score of transport at Rs. 30,000/-

cannot be accepted by us. But on the basis of evidence adduced by the claimant-Petitioner it is quite clear that he is incurring additional

expenditure because of the accident suffered by him as he cannot move in the ordinary way in public vehicles and he has been compelled to travel

either in a mini bus or in a hired taxi and he has also deposed that hiring of taxi is frequent. In the aforesaid circumstances, we reduce the

compensation on the score of transport at Rs. 20,000/-. It is unfortunate that such assessment in the facts of the case is bound to be a little

irrational. But considering the increasing cost of transport, we think that it will be commensurate with justice if we assess Rs. 20,000/- on account

of transport cost.

7. The appeal, therefore, is allowed to the extent indicated above. The total amount of compensation is therefore reduced by Rs. 18,000/- and the

award is assessed at Rs. 48,800/- with interest as directed by the learned Judge. In the facts of the case, there will be no order as to costs.

8. In view of the reduction of the total amount of compensation, the owner is absolved of the responsibility of paying anything to the claimant-

Petitioner and the whole amount is to be paid by the insurer.

Monoranjan Mallick, J.

9. I agree.