
(2006) 02 OHC CK 0042

In the Orissa High Court

Case No : M.A.C.A. No's. 345, 354, 355 and 356 of 2003

Bachani Das and Others

APPELLANT

Vs

Baikuntha Nath Swain and Another

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 1 OLR 399 Supp

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Advocate : Dillip Kumar Mohapatra and L. Kabi, for the Appellant; A.K. Rath, for the Respondent

Judgement

N. Prusty, J.—Heard Mr. D.K. Mohapatra, learned Counsel for the Appellant and Dr. A.K. Rath, learned Counsel for the Respondent No. 2.

2. M.A.C.A. Nos. 345, 354, 355 and 356 of 2003 have been filed by the respective Appellants challenging the common award/judgment dated 25.4.2003 passed by the learned Second M.A.C.T., Cuttack in Misc. Case Nos. 1057, 1058, 1059 and 1062 of 2000, which were dismissed on contest against opp.party No. 2 and ex parte against opp. party No. 1 on the ground that there is no acceptable evidence that the accident was caused due to rash and negligent driving of truck bearing Registration number OR-05-E-3915.

3. Mr. D.K. Mohapatra, learned Counsel appearing on behalf of the claimant-Appellants submits that even though the F.I.R. was lodged indicating the number of the truck which caused the accident as OR-05-E-1727, but during the investigation of the case by the Investigating Agency in connection with Tirtol P.S. Case No. 100/2000, the concerned investigating Officer found that the actual truck bearing Registration No. OR-05-E-3915 has caused the accident and accordingly charge sheet was submitted against the driver of the truck bearing registration No. OR-05-E-3915 and as such the Petitioners in the above cases have made the owner and insurer of the said vehicle as opposite parties.

4. Dr. Rath, learned Counsel appearing on behalf of the Respondents submits that since one of the occupants of a Auto Rikshaw, who was a passenger as well as Petitioner in one of the claim cases, has lodged the F.I.R. mentioning the number of the truck as OR-05-E-1727 and if at all the Misc cases were filed claiming compensation, the same ought to have been filed against the owner and insurer of the above said vehicle, but not against the present vehicle i.e. OR-05-E-3915, even though charge sheet had been submitted against its driver. Further more, the person, who lodged the F.I.R. was examined as P.W. 1 for all these cases, since all the claim petitions were taken up for hearing together and he was stated in his cross examination that the contention in the F.I.R. is correct and that while the Auto Rickshaw was on the move, the accident took place. In view of the above, once he has stated that the contention of the F.I.R. is correct, believing his statement, the learned trial Court has rightly rejected the claim applications filed by the claimant-Petitioners. Dr. Rath, learned Counsel further submits that the claimants ought to have made the owner and insurer of the Auto rickshaw in which they were traveling, as parties in these cases since the Auto rickshaw was also involved in the accident along with the truck as it appears from the evidence on record.

5. However a bare perusal of the cross-examination part of the P.W. 1 clearly indicates that he has stated "it is false to say that the truck in question is not involved in this accident and for this truck number has not been given in the F.I.R." and when he was further cross examined on recall he has also stated" It is false to say that the truck number given in the claim petition is not involved in the accident as a different truck number is mentioned in the F.I.R."

6. In view of the position as indicated above, the learned Tribunal ought to have taken the final form submitted by the investigating agency in the case after due investigation, into consideration, which clearly reveals that the actual truck which was involved in the accident was OR-05-E 3915. So far as contention of Dr. Rath regarding non impletion of parties is concerned, the statement of witnesses clearly indicates that there was no negligence on the part of the driver of the Auto Rikshaw and it is only the driver of the truck who was negligent in driving, for which accident occurred.

7. As such, I am of the considered view that no illegality or irregularity has been committed by the claimant-Appellants by not making the insurer and owner of the Auto Rikshaw as party in their claim applications. Learned Tribunal ought to have considered the factual aspect of involvement of the owner/insurer of the truck bearing Registration Number OR-05-3915, which was actually involved in the accident, if there are materials available in that respect as per the police papers and accordingly passed the award.

8. In view of the above, the common order dated 25.4.2003 passed by the learned Second M.A.C.T., Cuttack in Misc. Case Nos. 1057, 1058, 1059 and 1062 of 2000, is accordingly set aside. The matter is remitted back to the learned Tribunal for fresh disposal in accordance with law.

9. However, since these claims are of the year 2000 and in the mean time 5 years have passed, learned Tribunal shall do well to expedite further hearing of the matter, if necessary, and pass appropriate award in accordance with law, taking into account all the materials available on record.
10. All the Miscellaneous appeals are accordingly disposed of.
11. Urgent certified copy of this order be granted on proper application.