(2019) 02 OHC CK 0010

In the Orissa High Court

Case No : Motor Accident Appeal No. 1214 Of 2015, Motor Accident Appeal No. 1386 Of 2015

Divisional Manager And Others APPELLANT

Vs

Dillip Kumar Dalai And Others RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 02 OHC CK 0010

Hon'ble Judges : Dr. A.K.Rath, J

Bench : Single Bench

Advocate : Santanu Kumar Swain, Dr.Tahali Charan Mohanty

Final Decision : Disposed Of

Judgement

Dr. A.K. Rath, J

1. Against a common award passed by the learned 2nd Additional District Judge-Cum-MACT, Cuttack in MAC Case No.508 of 2010, two appeals have been filed i.e., the insurer has filed MACA No.1214 of 2015, whereas the claimants have filed MACA No.1386 of 2015.

2. The claimants are the unfortunate parents of the deceased Jiban Pattanayak. The case of the claimants was that on 24.7.2010 at about 1.20 P.M. while Jiban was returning from his college in a motorcycle, near Rahama College Chhaka in Cuttack-Paradeep Road, a tanker bearing registration no.OR-05-U-8131 came in a rash and negligent manner from Paradeep side and dashed him, as a result of which, he succumbed to the injuries at the spot. Thereafter the deceased was shifted to District Headquarters Hospital, Jagatsingpur for postmortem. He was eighteen years old at the time of accident. He was a student. He was a tutor and earning Rs.5,000/- per month. With this factual scenario, they filed an application under Section 166 of the Motor Vehicles Act, 1988 before the learned Tribunal.

3. Though notice was issued to the owner of the offending vehicle, but he had chosen not to contest the case and as such set ex parte. The insurer of the vehicle filed written statement denying its liability.

4. Stemming on the pleadings of the parties, learned Tribunal stuck four issues. To substantiate the case, the claimants had examined three witnesses. No evidence was adduced by the insurer. On an anatomy of the pleadings and evidence on record, learned Tribunal came to hold that the accident occurred due to rash and negligent driving of the driver of the offending tanker. The deceased was a student. His notional income was assessed at Rs.4,000/- per month. Learned Tribunal deducted 50% of the income towards his personal expenses, since he was a bachelor. Applying '18' multiplier and funeral expenses of Rs.10,000/-, it directed the insurer to pay an amount of Rs.4,42,000/- with interest at the rate of 6% per annum from the date of filing of the application.

5. Dr.Tahali Charan Mohanty, learned Senior Advocate for the claimants submitted that the deceased was a bright student. The parents lost their son. No award has been made under Filial Consortium. The award may be enhanced.

6. Mr.Santanu Kumar Swain, learned counsel for the insurer submitted that the award is exorbitant. There is no document that the deceased was earning Rs.4,000/- per month. The same was assessed on surmises and conjectures. Since it is a contributory negligence, the insurer is exonerated from its liability.

7. The submission of the learned counsel for the insurer is difficult to fathom. The plea of contributory negligence was not raised before the learned Tribunal. No evidence was adduced. With regard to income, learned Tribunal is justified in assessing the notional income at Rs.4,000/- per month. Since the deceased was a bachelor, learned Tribunal deducted 50% and applied 18 multiplier.

8. In Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and others, 2018 (4) T.A.C.345 (S.C.), the apex Court went in depth into the matter and held that parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have cognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

9. The ratio laid down in the case of Magma General Insurance Co. Ltd., proprio vigore applies to the facts of this case.

10. If Rs.80,000/- is added towards Filial Consortium, the award comes to Rs.5,22,000/-(Five lakhs twenty two thousand). The enhanced award amount of Rs.80,000/-(Eighty thousand) with interest as awarded by the learned Tribunal shall be deposited before the learned Tribunal within a period of six months from today, whereafter the same shall be disbursed to the claimants by the learned Tribunal in terms of its order.

11. Both the appeals are disposed of in terms of the aforesaid judgment.

