
(2009) 01 OHC CK 0042

In the Orissa High Court

Divisional Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Premakalyani Dei and Others

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Motor Vehicles Act, 1994 — Section 173

Citation : (2009) 107 CLT 287 : (2009) 1 OLR 577 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The Judgment and order of compensation dated 14th March, 2000 passed by 4th Motor Accident Claims Tribunal, Puri in M.A.C.T. Misc. Case No. 528/80 of 1993/1991 is assailed by the National Insurance Co. Ltd. in this appeal, filed u/s 173 of the Motor Vehicles Act, 1994.

2. The aforesaid M.A.C.T. Misc. Case was registered on the basis of an application filed u/s 110-A of the Motor Vehicles Act, 1939 by the unfortunate widow and minor son of deceased Bhajaman Mohanty, inter alia, alleging that on 30th April 1990 while Bhajaman was travelling on his scooter from Vani Vihar to his resident on the left side of the road the offending Ambassador Car bearing Regn. No. ORX-9622, driven in a rash and negligent manner, dashed against the right side of the scooter, consequently he fell down and sustained grievous injuries and became unconscious. He was immediately removed to Capital Hospital and from there to SCB Medical College and Hospital, Cuttack. In spite of best medical care he succumbed to the injuries sustained due to the accident. It is further averred that the said Bhajaman was aged about 48 years and was working as a Vice-Principal of Central School, Bhubaneswar and drawing a monthly salary of Rs. 3,000/- at the relevant time. The Petitioner-Respondents claimed a compensation of Rs. 5,53,000/-.

3. After receiving notice the owner of the Ambassador Car appeared and filed a written statement taking the stand that the vehicle was duly insured with the

Appellant-Insurance Company and that the driver had a valid driving licence. Though the accident was admitted in the written statement, but then it was stated that the accident took place due to negligence of the deceased.

4. The Insurance Company appeared and filed a written statement vaguely denying all the allegations and prayed to put the Petitioner-Respondents to strict proof of the allegations levelled. Subsequently, however an additional written statement was filed taking the stand that the accident took place when the scooter slipped and Bhajaman fell down on the road. On the basis of such pleadings, the Appellant-Insurance Company prayed to dismiss the claim petition.

5. On the basis of the pleadings the Tribunal framed six issues. To substantiate their case the Petitioner-Respondents got three witnesses examined and exhibited two documents. On behalf of the owner as well as the Insurance Company, no oral evidence was adduced.

The owner however got exhibited the original Insurance Policy as Ext.A/1. On the other hand, on behalf of the Insurance Company five documents were got exhibited being the F.I.R., charge sheet, injury report, seizure list, inquest report and postmortem report which were marked as Exts.A to F respectively.

6. After vivid discussion of the entire evidence, both oral and documentary, the Tribunal arrived at a conclusion that the death of Bhajaman occurred on account of the motor vehicle accident involving the offending Ambassador Car bearing Regn. No. ORX-9622 and due to rash and negligent driving by its driver at the time of alleged accident.

7. Considering the age of the deceased and the monthly income as well as taking into considering other facts, the Tribunal awarded a compensation of Rs. 1,75,000/- together with interest @ 12% per annum from the date of claim petition, i.e. 19th January, 1991 till realization. The said Judgment is assailed mainly on the ground that the Tribunal has not properly appreciated the evidence inasmuch as the final form (Ext. B) submitted by the Police, clearly indicated that the offending Ambassador Car was no way involved in the accident and in fact the deceased while travelling in his scooter tried to take a turn to his right when his scooter slipped, consequently, he fell down on the road and sustained head injury. This aspect according to Mr. Narasing, Learned Counsel, was not kept in mind by the Tribunal. It is further submitted that as the accident took place due to negligence of the deceased and as the offending Ambassador Car was no way involved, the Insurance Company is not liable to pay any compensation.

8. These submissions are strongly repudiated by Learned Counsel appearing for the Petitioner-Respondents. It is stated that neither the driver of the offending Ambassador Car was examined by the owner or the Insurance Company to establish as to how the accident took place nor any eye witnesses were examined. Further, it is submitted that "the final form (Ext.B) cannot be ipso facto accepted as the correct version more so because the Police Officer, who had prepared the final form, was not examined. In short, according to Learned

Counsel for the Petitioner-Respondents, in the absence of any evidence to establish the correctness of the facts narrated in the final form and the source from which such information was received, no reliance can be placed on the final form.

9. Heard Learned Counsel for the parties at length and perused the evidence, both oral and documentary. Fact remains, no oral evidence was adduced either by the owner of the vehicle or by the Insurance Company. The Investigating Officer, who had prepared the final form (Ext.B) was also not examined. Admittedly, he was not an eye witness. The basis for the conclusions arrived by him are not brought before the Court. Thus the Tribunal has not committed any illegality in not relying upon the final form.

10. That apart perusal of the written statement filed by the owner reveals that the accident is almost admitted. The only plea taken in the written statement is that the accident took place due to negligence of the deceased. It is stated that the deceased was travelling on his scooter in front of the Ambassador Car and suddenly he stopped with a view to take a turn, consequently the accident took place. Surprisingly, the driver of the Ambassador Car, who is the best witness to explain to the Court as to how the accident took place, was kept out of the Court.

11. The Petitioner-Respondents produced two eye witnesses before the Tribunal being P.Ws.2 and 3. Both of them were near the spot and seen the accident. In their evidence they have vividly explained as to why the accident took place. Perusal of the said evidence leads to an irresistible conclusion that the accident took place due to collusion between the Car and the Scooter. Though both of the witnesses were cross-examined, nothing could be elicited to disprove the statements made by them in their examination-in-chief. The Tribunal had dealt with the evidence of both the witnesses in extenso and the conclusions arrived at appears to be just and proper.

12. So far as the quantum of compensation is concerned, the deceased being an employee in the Central School, there is no dispute with regard to his age as well as monthly salary. In the case at hand, the Tribunal has rightly arrived at a conclusion that the contribution of the deceased to his family was Rs. 2,000/- per month. He was aged about 48 years when the accident took place. Thus, the compensation awarded is just and adequate.

13. Taking into consideration all the facts and circumstances, this Court while not interfering with the compensation awarded reduces the interest from 12% to 7 1/2% per annum from the date of filing the claim application, i.e. 19.1.1991.

14. It is pertinent to mention here that this appeal has been dismissed so far as the owner of the offending Ambassador Car is concerned, but then as the order passed no way prejudices the legal heirs, the appeal is disposed of.

15. The Appellant-Insurance Company is directed to deposit the entire awarded amount before the Tribunal within six weeks hence, After the deposit is made,

the same shall be disbursed in favour of the Petitioner-Respondents as per the stipulations made by the Tribunal proportionately apportioning the same.

16. The statutory deposit made before this Court shall be returned to the Appellant-Insurance Company with interest accrued thereon on proper application by a crossed cheque/draft after the entire amount with interest is deposited before the Tribunal.

B.N. Mahapatra, J.

I agree.