
(1993) 07 OHC CK 0005
In the Orissa High Court
Case No : M.A. No. 295 of 1987

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Mahadei Behera and Others	RESPONDENT

Date of Decision : 15-07-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110D

Citation : (1994) ACJ 1096

Hon'ble Judges : A.K. Padhi, J

Bench : Single Bench

Advocate : P. Roy and S.K. Ghose, for the Appellant; S.D. Das, A.S. Nandy, B. Misra, S.K. Das and A.K. Misra, for the Respondent

Judgement

A.K. Padhi, J.—The insurer is the appellant against the award passed by the Second Motor Accidents Claims Tribunal, Berhampur, u/s 110-D of the Motor Vehicles Act (hereinafter referred to as "the Act").

2. The claim application was filed u/s 110-A of the Act claiming compensation to the tune of Rs. 75,000/- for the death of one Kashinath Behera who has died in course of an accident caused due to the rash and negligent driving of the driver of the vehicle CRG 5799. In the claim petition it has been averred that on 2.3.1986 at about 6.30 p.m. deceased Kashinath Behera was returning home on a cycle from Berhampur side. The offending vehicle came from the opposite direction driven in a rash and negligent manner, ran over the cycle and body of the deceased as a result of which he died at the spot and the cycle was totally damaged. At the time of his death the deceased was 49 years old and he was earning Rs. 40/- to Rs. 50/- per day as a "kaviraj".

3. The owner on being noticed appeared and denied the allegations made in the claim petition. The insurer appeared and contested the case as the owner claimed to be indemnified by the insurer.

4. Issues were framed and evidence was adduced from both the sides. The

learned Tribunal after assessing the evidence on record came to the finding that Kashinath Behera died due to the accident and the accident occurred due to the rash and negligent driving of the offending vehicle. Calculating the total amount of dependency, the learned Tribunal awarded Rs. 45,000/- as compensation. In the ordering portion the Tribunal ordered that the insurer was liable to indemnify the owner of the vehicle in respect of the compensation. It is also liable to pay penal interest at the rate of 12 per cent per annum if the awarded amount of compensation would not be paid within a period of three months. This award passed by the learned Tribunal is under challenge.

5. In this case the owner has not contested the case and the insurance company has contested the matter.

6. Learned counsel appearing for the insurer submits that there is paucity of evidence to come to the conclusion that the driver of the offending vehicle had caused the accident. He further submits that the learned Tribunal had no jurisdiction to award penal interest as Section 110-CC of the Act does not empower it to impose such penalty. For the first submission, learned counsel for the appellant took me to the evidence adduced on behalf of the claimants.

7. PW 1 is the only witness who had seen the accident. He had specifically stated that Maharaja bus bearing registration No. CRG 5799 was coming from Aska side at the speed of 70 to 80 km. per hour without headlight on and without blowing horn. It dashed against Kashinath Behera as a result of which the cycle was damaged. The wheels rolled on the head of the deceased. The bus stopped after the accident for a short time and then left with speed. People removed him to the Medical College Hospital where he died on that very day. In the cross-examination he has stated that he saw the accident from the tank which situates at a distance of about 200 yards from the spot, though darkness was setting in at that time. No oral evidence has been adduced on behalf of the insurer, but the certified copy of the final report in G.R. Case No. 194 of 1986 which was investigated on the F.I.R. lodged, informing the death of deceased Kashinath Behera has been filed. Relying on this document, the counsel for the insurance company submits that this offending vehicle had not caused the accident. From the document, I find that while submitting the final report in the aforesaid G.R. Case it was stated therein:

The broken right side headlight glass pieces square size were seized from the spot and the buses CSG 461, CRG 8555, CSG 3144, CRG 399, CRG 499 and CRG 5799 which are plying from Aska to Berhampur from 5 p.m. to 7 p.m. have been thoroughly verified and found the bus CRG 5799 which was of light blue colour (spray colour) has replaced the right side headlight of square size and the bus was strongly suspected to have been involved in this case...The witnesses Bulla and Santosh have also suspected the bus to have been involved in this case but they could not give definite reference...

Since the Investigating Officer could not collect enough evidence to file charge-

sheet, he had submitted final report. Assessing oral evidence adduced on behalf of the claimants as well as Exh. A, I find that the conclusion of the learned Tribunal that the accident occurred due to the rash and negligent driving of the driver of the bus CRG 5799 is a correct finding and is unassailable.

Computation of the amount to the tune of Rs. 45,000/- by the learned Tribunal is also correct assessment from the evidence adduced by the claimants. Therefore, the same is also correct.

8. Coming to the next contention of the learned counsel for the appellant that the learned Tribunal did not have any jurisdiction to award the penal interest, it has much force. In *Oriental Fire and General Ins. Co. Ltd. Vs. Buli Dei and Others*, A. Pasayat, J. after examining the provisions of the Act as well as the provisions of law with regard to interest, came to the conclusion that when the Tribunal exercises its jurisdiction to award interest on the amount of compensation at a particular rate and from a particular date, there is no further scope for enhancement of the rate of interest retrospectively for default in the payment of compensation. In *New India Assurance Co. Ltd. v. Pratap Kumar Sahu* M.A. No. 468 of 1989; decided on 25.6.1993, G.B. Patnaik, J. relied on the ratio of decision of *Buli Dei's* case (supra). Therefore, according to the interpretation of the above decisions, the direction in the award for retrospective enhancement of rate of interest for default of payment of compensation is not envisaged under the Motor Vehicles Act. I humbly agree with the decision of A. Pasayat, J. reported in *Buli Dei's* case (supra). I direct that the rate of interest as awarded by the learned Tribunal shall be applicable till payment without stipulation of higher rate of interest as penalty. That part of the direction of the Tribunal-

It is further ordered that unless the respondent No. 2, the insurance company, pays the aforesaid amount to the persons as ordered above, within a period of three months from the date of this order, it shall be bound to pay penal interest at 12 per cent per annum from the date of application, i.e., 4.4.1986 till realisation.

is set aside. All other findings and the sum awarded to the claimants and other directions in the award are hereby confirmed.

9. In the result, the appeal is allowed in part. In the circumstances of the case, there shall be no order as to costs.