
(2004) 01 OHC CK 0048

In the Orissa High Court

Case No : M.A.C.A No. 385 and 449 of 2003

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Satyabati Mohanty and Another
 Satyabati Mohanty
and Others Vs Purna Chandra Samal and Another

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 170, 171

Citation : (2004) 3 ACC 283 : (2004) 97 CLT 674 : (2004) 1 OLR 329

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—These two appeals arise out of a common judgment and award passed by the Motor Accidents Claims Tribunal-cum- Second Additional District Judge, Cuttack in M.V. Misc. Case No. 841 of 1992 directing the Insurance Company, i.e., the appellant in M.A.C.A No. 385 of 2003 to pay compensation of Rs. 1,50,000.00 along with interest at the rate of 6% per annum from 7.5.1999.

Claimants-respondents 1 and 2 in M.A.C.A No. 385 of 2003 are the parents of deceased Ramesh Chandra Mohanty and the appellants in M.A.C.A. No. 449 of 2003.

2. The short facts leading to the claim made by the claimants u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") are that on 17.7.1992 at about 2 p.m. when the deceased Ramesh Chandra Mohanty was waiting near Panchupandav Chhak of N.H. 5 standing on the left side of the road, to board a bus, a truck bearing registration number ORY 81 suddenly dashed against him. As a consequence of such dashing, the deceased sustained serious head injury. He was shifted to Kendrapara Hospital initially and then to S.C.B. Medical College Hospital, Cuttack, where he succumbed to the said injury after about 18 days. It was the further case of the claimants that deceased Ramesh was about 23 years of age at the time of death and was preparing to take

admission for prosecuting higher studies after completing his Bachelors Degree in Arts from Paradeep College. The owner of the truck who is respondent No. 3 in M.A.C.A. No. 385 of 2003 and respondent No. 1 in M.A.C.A. No. 449 of 2003 did not choose to appear before the Tribunal and remained ex parte. The New India Assurance Company which was the insurer of the offending vehicle, entered its appearance and filed the written statement denying the accident, the insurance and the allegation of negligence on the part of the driver of the offending truck.

3. On the above pleadings the Tribunal below framed four issues. The claimants examined one witness, i.e., the father of the deceased as P.W. 1 and exhibited six documents, namely, the certified copies of FIR, seizure list, Post-mortem report, final form, H.S.C. examination certificate and driving licence. The Insurance Company however neither examined any witness nor produced any document in support of its pleadings.

4. On a consideration of the materials available on record, the learned Tribunal passed the impugned award on 9.4.2003 which is assailed by both the Insurer as well as the claimants.

5. Mr. Roy, learned counsel for the insurer-appellant contended that the multiplier of 15 as applied by the Tribunal below is not correct and the same should have been taken to be 13. It was further submitted by Mr. Roy that the Insurer is not challenging the quantum of compensation but the manner of determination of compensation for which no leave of the Tribunal u/s 170 of the Act is necessary. In support of his contention, Mr. Roy has relied upon a decision of this Court passed in A.H.O. Nos. 116 and 136 of 1995.

From the above judgment of this Court, it appears that similar contention was raised on behalf of the insurer and it was observed as follows : "Mr. Roy appears to be correct that insurer assailed the manner of determination of compensation and not the quantum as such"

The above observation in no way supports the contention of Mr. Roy as in the said decision it was not decided whether the Insurance Company can indirectly challenge the quantum of compensation awarded by the Tribunal by assailing the manner of determination of compensation. Hence the above observation of this Court cannot be taken to be a ratio decidendi of the said judgment.

6. Mr. K. K. Das, learned counsel for the claimants in reply-submitted that as no permission was taken by the, Insurer u/s 170 of the Act from the Tribunal to take a wider defence, it is not open to the Insurance Company to challenge the quantum of compensation awarded by the Tribunal. Mr. Das in support of his contention relied upon a decision reported in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, The apex Court in the said case has observed as follows :

"It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceeding on merits only if the conditions

precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal Unless that procedure is followed the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No. 1 - insurance Company in the Claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on account of the contract of the insurance. That was not an order of the Court itself permitting the Insurance Company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, respondent No. 1 -Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal."

He also cited a decision of this Court reported in *The United Insurance Co. Ltd. Vs. Nakula Dalai* and another, , wherein relying upon the decision of the apex Court, this Court has held that the Insurance Company cannot challenge the quantum of compensation unless it has been permitted u/s 170 of the Act by the Tribunal to take a wider defence.

The above decisions are squarely applicable to the present case. I, therefore, hold that M.A.C.A. No. 385 of 2003 challenging the quantum of compensation awarded by the Tribunal is not maintainable, as on scrutiny of the record of the Tribunal it is revealed that the appellant- insurer has neither applied nor was permitted to take a wider defence u/s 170 of the Act.

7. Shri K. K. Das, learned counsel for the claimant-appellants in M.A.C.A. No, 449 of 2003 submitted that claimants are entitled to a higher amount of compensation and further the interest of 6% per annum as awarded by the Tribunal from 7.5.1999 should have been at the rate of 9% per annum from the date of accident. Mr. Das in support of his contention that the court can pass an award for an amount which may be more than what was prayed for by the claimants, if the court feels that such amount would be the just compensation, relied upon the decisions reported in *Mulla Md. Abdul Wahid Vs. Abdul Rahim and Another*, and 2003 (1) SBR 442, *Nagappa v. Guru Dayal Singh and Ors.* He further submitted that in the case of *Nagappa (supra)* the apex Court has held that where evidence on record justifies passing of an award, which is more than the amount claimed by the claimants, an award for such amount can be passed. It would be profitable to quote the observations of the apex Court in the . above decision, which is as follows :

"Hence, as stated earlier, it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted his claim....."

In the above case, the apex Court has also approved the judgment of this Court in the case of Mulla Md. Abdul Rahim (supra) where Justice G. B. Patnaik (as he then was) held that there are no fetters on the power of the Tribunal to pass an award of compensation in excess of the amount, which is claimed in the application. I, therefore, have no hesitation to, hold that there is no impediment on the part of the Tribunal to pass an award of compensation on an application u/s 166 of the Act for an amount exceeding the amount claimed by the claimants in their application. Now therefore it is to be seen if in the present case the claimants are entitled to a higher compensation than what has been claimed by them and as such an amount more than what has been awarded by the Tribunal.

8. The evidence adduced by the claimants clearly establishes that deceased Ramesh was a Graduate and the H.S.C. Examination Certificate (Ext. 5) discloses that his date of birth was 25.4.1969. Hence, on the date of his death he was aged about 23 years. Applying the Second Schedule as given in the Act u/s 163-A the multiplier should have been 17 instead of 15, as applied by the learned Tribunal below.

9. Mr. Roy on behalf of the insurer submitted that the multiplier should have been 13 taking into consideration the age of the claimants and in support of his contention he placed reliance on the decision reported in 2003 (11) SBR 554 (Municipal Corporation Greater Bombay v. Sri Laxman Iyyer and Anr.). The apex Court in the above decision keeping in view the observations made in various cases held as follows :

"Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated have relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants it can never exceed 10 even by the most liberal standards."

10. In the decision in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , the Apex Court has observed that the calculation of compensation and the amount worked out in the schedule referred to in Section 163-A of the Motor Vehicles Act suffers from several defects. In fact, what had been noticed by the Supreme Court was that the table abounds in mistakes. It was indicated further that neither the Tribunals nor the Courts can go by the ready reckoner and that it can only be used as a guide. It was further pointed out that the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. It was also indicated that it must be realized that the Tribunal/Court has to determine a fair amount of compensation awardable to a victim of an accident which must be proportionate to the injury caused or to the pecuniary loss sustained. Law is now well settled that the multiplier method stands accepted for arriving at the quantum of compensation to be awarded on

an application u/s 166 of the Act General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, may be referred to].

11. Judging the present case in the light of the aforementioned decisions of the apex Court, this Court is of the view that the Tribunal below by taking into consideration the age of the claimants who are parents of the deceased, has rightly applied the multiplier of 15 instead of 17, as given in the second schedule u/s 163-A of the Motor Vehicles Act. I, therefore, find no reason to interfere with the said method of calculation and the application of multiplier by the learned Tribunal below.

12. With regard to the submission of the advocate for the claimants regarding the rate of interest awarded by the learned Tribunal and the date from which the interest should be paid, it is necessary to refer to the provision of the Act which confers power on the Tribunal to award interest on compensation. The said provision, i.e., Section 171 of the Motor Vehicles Act, prescribes that where the Claims Tribunal allows a claim for compensation, it may direct that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. . Thus, it is clear that while dealing with an application u/s 166 of the Act and awarding compensation thereon, the Tribunal has jurisdiction to direct payment of interest from such date which cannot be earlier to the date of filing of the claim application. The apex Court in the decision reported in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, has held that interest can be granted even if the claimant does not specifically plead for the same as it is consequential in the eye of law. It is further held that interest is compensation for forbearance or detention of money and that interest is awarded to a party only for having kept him out of the money, which ought to have been paid to him. The apex Court also has clearly held that no principle could be deduced nor any rate of interest can be fixed to have a general application in motor accident claim cases having regard to the nature of provision u/s 171 giving discretion to the Tribunal in such matter and that there cannot be any hard and fast rule in awarding interest which is in the sole discretion of the Tribunal or Court. Keeping in view the above position of law and on finding from the record of the Tribunal that the delay in completion of the case was due to the laches of the claimants who had taken repeated adjournments till 7.5.1999, I hold that the Tribunal is correct in awarding interest of 6% per annum on the amount of compensation from 7.5.1999.

13. Considering the above aspects of the case, I find that there is no merit either in M.A.C.A. No. 385 of 2003 filed by the " insurer or in M.A.C.A. No. 449 of 2003 filed by the claimants. Hence, both the appeals are dismissed being devoid of merit but in the circumstances without any cost. The insurance company is directed to deposit the entire amount of compensation along with interest and cost, as directed by the Claims Tribunal, before the Tribunal within a period of

two months from the date of this order for being disbursed to the claimants as per the direction of the Tribunal given in the impugned award.