
(2008) 01 OHC CK 0072
In the Orissa High Court
Case No : MACA No. 775 of 2006

Divisional Manager, New India Assurance Company Ltd.	APPELLANT
Vs	
Manguli Sahoo and Others	RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) CLT 1089 (Suppl Crl) : (2008) 1 OLR 1014 Supp : (2008) OLR 1089 (Suppl Crl)

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Advocate : Akshya Ku. Rath, A.K. Panda and A.K. Nath, for the Appellant; B. Mohanty and S.K. Mohanty for R-1 to 5 and B. Sahoo-1, for R-6, for the Respondent

Judgement

B.N. Mahapatra, J.—This appeal has been filed u/s 173 of the motor vehicles act, 1988 against the award passed by member, 2nd M.A.C.T., Northern division, sambalpur on 10th February, 2004 in Misc.(A) Case No. 229 of 2000(D).

2. Short facts which give rise to this appeal are that the deceased Bhagirathi Sahu was killed in a vehicular accident. He was working as Helper-cum-kantawala in the truck bearing registration No. OR 21-8028. On 8.11.2000 while the said truck was going from Berhampur to Phulbani carrying sugar bage met with an accident near bvillage Sankarkhol ad the vehicle was capsized. As a result of said accident Bhagirathi died on the spot.

3. The claim of the claimants before the Tribunal was that at the time of accident the deceased was 22 years old and he was getting salary at the rate of Rs. 3,000/- per month. The deceased had future prospect and he would have become a driver and his earning would have Rs. 5,000/- per month. The vehicle was insured with opposite party No. 2 New India Assurance Company Ltd. who was liable to pay compensation. The applicants claimed compensation of Rs. 4,00,000/- with interest before the learned Tribunal.

4. Both the opposite parties filed their written submissions separately. Opposite party No. 1 is the District Manager, Orissa State Civil Supplies Corporation Limited, Phulbani (hereinafter called as the "Corporation") and the owner of the offending vehicle. In its written submission the Corporation has admitted the accident met by the truck on the alleged date and the death of the deceased out of it. The Corporation's further case is that the deceased was not a regular helper in the offending vehicle on the date of the accident. His employment was casual and on daily wage basis. At the time of accident, he was getting Rs. 48/- per day. The vehicle was duly insured with the opposite party No. 2 and the insurance policy was valid on the date of accident. The Insurance Policy covered the risk of the driver and Cleaner and hence opposite party No. 2-Insurance Company was liable to pay compensation.

5. Opposite party No. 2-Insurance Company in its written statement has denied the accident as well as the death of the deceased out of the same and the insurance of the offending truck with it. The further claim of the Insurance Company was that the applicants had to prove the accident and opposite party No. 1 had to produce all the documents of the vehicle and Insurance policy failing which the Insurance Company would not indemnify the compensation. On the aforesaid pleadings the learned Tribunal framed the following issues:

(1) Whether on the alleged day of 8.11.2000 the accident occurred near Arabadinala near village Sankarkhol involving the offending truck bearing No. OR-021 -8028 for the rash and negligent driving of the driver and in the said accident deceased Bhagirathi Sahoo had died?

(2) Whether the applicants are entitled to get compensation and, if so, to what extent and from whom?

6. In course of hearing before the learned Tribunal, the claimants examined two witnesses and produced five documents which were marked as Exts. 1 to 5. Those were certified copies of F.I.R., charge sheet, seizure list, zimanama and Xerox copy of P.M. report. Opposite parties have not examined any witness. But opposite party No. 1 -Corporation has filed certified copy of the driving licence of the driver and copy of the Insurance Policy, which have been marked as Exts. A and B. A letter issued by the State Civil Supplies Corporation indicated that the deceased was employed in Mobile Van as Helper-cum-Kantawala on daily wage basis and he was earning Rs. 48/- per day. Taking daily wage at Rs. 48/- per day, his monthly income was estimated at Rs. 1440/-. On the basis of the oral and documentary evidence, learned Tribunal came to the conclusion that on the alleged night the accident occurred involving the offending truck and in the said accident, the deceased died. The learned Tribunal further held that the said accident had occurred- due to rash and negligent driving of the driver of the truck. The driver of the truck also died in the said accident for which the police after investigation filed final report. The further observation of the learned Tribunal was that the deceased died at the age of 28 as revealed from the post mortem report marked as Ext.5, and had the deceased not died his earning

would have been raised. With the above observation, the learned Tribunal took the average earning of the deceased at Rs. 2,500/- per month. Deducting 1/3rd towards the personal expenses, his contribution to the claimants was held at Rs. 1700/- per month and annually at Rs. 20,400/-. Taking into consideration the age of the deceased when died, uncertainties of life, number and age of the applicants, learned Tribunal applied 12 multiplier. The learned Tribunal calculated the compensation at Rs. 2,44,800/-. Learned Tribunal was also of the opinion that the claimants were entitled to get some compensation for loss of estate, love, affection and care of the deceased to them and expenditure made in observing the Sudhikriya. Towards all these, learned Tribunal awarded Rs. 6,000/-. In total, the learned Tribunal held that the claimants were entitled to compensation of Rs. 2,51,000/-. Learned Tribunal further held that the claimants are entitled to get 9% interest per annum on the awarded amount from the date of application i.e. 22.11.2000 till the date of realization, and the opposite party No. 2 is liable to pay the same. Against this order, Insurance Company has filed the present appeal.

7. Learned Counsel appearing on behalf of the Insurance Company basically challenges the amount of compensation awarded by the learned Tribunal as high and excessive. In support of his contention, he has drawn the attention of this Court to the findings of the learned Tribunal given in paragraph-10. In paragraph-10, learned Tribunal, inter alia, observed that the A.W.1 has stated that the deceased was getting salary of Rs. 3,000/- per month and used to contribute Rs. 2,000/- to claimants for maintenance, but, no such document was filed to prove such earning. The other ground taken by the Insurance Company is that though the offending vehicle was covered by valid Insurance Policy covering the risk of the Driver and Cleaner, the same did not cover the risk of the Helper.

8. This Court is not inclined to accept the stand taken by the Insurance Company that the life risk of the Helper was not covered but only the life risk of the Cleaner along with driver was covered by the Insurance Policy. This Court does not find any difference between Helper and Cleaner. Needless to say that in Common Parlance, people never make any distinction between Helper and Cleaner of a passenger bus or a goods carrier. The difference is only in nomenclature. No evidence was also brought on record to the effect that besides the driver two other persons termed as "Cleaner" and "Helper" were travelling in the same vehicle.

In view of the above, this Court is of the view that the risk of the Helper is covered by the Insurance Policy. The next ground taken by the learned Counsel for the Insurance Company is that the driver of the offending vehicle did not possess valid driving licence. However, to this effect, learned Counsel failed to adduce any supporting evidence. The other ground raised by the learned .counsel is that the award of interest at the rate of 9 per cent is at the higher side.

9. Learned Counsel appearing on behalf of the claimants as well as owner of the

vehicle support the award passed by the learned Tribunal. Learned Counsel for the claimants submitted that this case may be disposed of in the manner and spirit in which motor vehicle claim cases are disposed of in Lok Adalat to which learned Counsel appearing on behalf of the Insurance Company has no serious objection.

10. After hearing learned Counsel appearing for the parties and considering the facts and circumstances of the case, this Court is of the view that the monthly income of Rs. 2,500/- as estimated by the learned Tribunal is at the higher side. Therefore, this Court holds that compensation of Rs. 2,00,000/- (Rupees two lakh) will be just and proper compensation in this case which shall bear 7% percent interest per annum from the date of application till the date of payment. Learned Counsel for the Insurance Company submitted that the Insurance Company has already paid Rs. 50,000/- towards the award to the claimants. Learned Counsel for the opposite parties has no denial to such submission of the Insurance Company. If Rs. 50,000/- has already been paid to the claimants towards the interim award, this amount should be deducted from the total compensation amount of Rs. 2,00,000/-. The Insurance Company is directed to deposit the rest amount of Rs. 1,50,000/- before the learned Tribunal within six weeks from the date of receipt of this Order along with 7% per cent interest on Rs. 2,00,000/- from the date of application i.e. 22.11.2000 till the date of payment of interim award of Rs. 50,000/- and thereafter 7% per cent interest on Rs. 1,50,000/- till the actual date of payment of balance compensation amount of Rs. 1,50,000/-. Immediately after deposit of the compensation amount with interest as indicated herein before the learned Tribunal shall disburse the said revised amount to the claimant-Respondents in similar manner it had disbursed in its award. The Insurance Company is entitled to get back the statutory amount of Rs. 25,000/- deposited in this Court with the accrued interest on production of the receipt in support of payment of the awarded amount with interest before the learned Tribunal as directed above.

Accordingly, the appeal is allowed in part.