(2007) 02 OHC CK 0023

In the Orissa High Court

Divisional Manager, Oriental Insurance Co. Ltd. APPELLANT

Vs

Iswar Mohapatra @ Nahak and Others RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2007) 104 CLT 248 : (2007) 104 CLT 247 : (2007) 1 OLR 691 Supp

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

Bench : Single Bench

Judgement

A.S. Naidu, J.—The Judgment and award dated 07.5.1999 passed by the Second Motor Accident Claims Tribunal (S.D.), Berhampur in M.A.C Case No. 212/97 (79/97) is assailed in this appeal filed u/s 173 of M.V Act, 1988 by the Appellant-Oriental Insurance Co. Ltd.

2. The accident in question occurred on 14.9.1996 when deceased Pandab Mohapatra was working as a coolie in the truck bearing registration No. OR-07A-7223. It is alleged that due to rash and negligent driving of the driver, the said truck capsized, as a result of which Pandab sustained grievous injuries. Though Pandab was treated in hospital, he succumbed to the injuries. The father and mother of deceased Pandab filed the aforesaid M.A.C Case No. 212/97(79/97) claiming compensation to a tune of Rs. 2,00,000/-.

3. The owner of the offending vehicle did not contest the case. Respondent No. 2-Insurance Company filed a written statement baldly denying the averments made in the MAC case, but then took a stand that the driver of the offending vehicle was not possessing a valid and effective driving licence for which it was not liable to pay any compensation.

4. On the basis of pleadings the Tribunal framed four issues. In order to substantiate the case the Petitioners got three witnesses examined including Petitioner No. 1 as P.W.1 and exhibited 12 documents. On the other hand the Appellant-Insurance Company did not adduce any oral evidence. The certificate

of insurance and copy of the driving licence, which were available on record were exhibited by it as Exts. A and B respectively.

5. After discussing the evidence, both oral and documentary, and taking the age and income of the deceased and other facts into consideration, the Tribunal awarded a compensation of Rs. 1,86,000 with interest @ 9% per annum from the date of application till realization. It was further directed that if the amount was not paid within 30 days the same would carry interest @ 15% per annum till realization.

6. The said award is assailed by the Appellant-Insurance Company mainly on the ground that the deceased was not working as a labourer in the offending truck, but then was a gratuitous passenger. It is further submitted that the Tribunal has not properly assessed the quantum of compensation and the amount awarded'' is on higher side.

According to learned Counsel for the Appellant-Insurance Company awarding default interest @ 15 % per annum as well as interest @ 9% per annum is not just and proper. It is further submitted that though the documents like statements recorded by the Investigator and other materials collected by him were produced by the Appellant-Insurance Company before the Tribunal, the same were not marked as exhibits.On being questioned as to under what provision of law either of M.V Act or Evidence Act a report of an Investigator or statements recorded by him, who was a private person appointed by the Insurance Company could be admitted into evidence, Mr. Dutta learned Counsel appearing for the Appellant-Insurance Company, submitted that there is no such provision. That apart, an Investigator is an agent of the Insurance Company. He has not been examined in the case to prove the statements stated to have been recorded by him. Thus admitting the said statements into evidence without disclosing the source from which the same were collected and proper proof thereof, could not have been justified. The Tribunal rightly did not take note of-the said documents and refused to admit the same into evidence. In the absence of observance of the requisite paraphernalia prescribed in law, I do not find any error to have been committed by the Tribunal. So far as the allegation that the deceased was not working as a labourer in the offending truck, but was a passenger in the said truck was concerned, as has been stated earlier, no evidence has been adduced by the Appellant-Insurance Company to prove the same that part in cross-examination the father of the deceased, to a suggestion made by the Appellant-Insurance Company, answered as follows:

It is not a fact that he was travelling as a passenger in that truck. It is not a fact that he was dealer BMCC camp.

In the evidence in chief the father of the deceased has categorically stated that his son was working as labourer under Respondent No. 1, i.e. owner of the truck, and he was getting Rs. 60/ - per day towards his wages and the day when accident took place he was travelling in the truck as a labourer.

7. The only other ground raised by the Appellant-Insurance Company is that the quantum of compensation awarded is exorbitant. No materials were produced before this Court that a petition u/s 170 of M.V Act was filed before the Tribunal. In the absence of such a petition the Insurance Company is precluded from challenging the quantum of compensation. In the appeal memo also it is not stated that the Appellant-Insurance Company did in fact file a petition u/s 170 of M.V Act before the Tribunal and whether that was allowed or rejected.

8. This is a case where a person in the prime of his youth has expired in a motor vehicle accident, thereby causing a heavy loss and mental tension to his parents. He was an earning member of his family. Considering all these facts, this Court feels that the award of compensation of Rs. 1,86,0007- by the Tribunal is not exorbitant This Court, does not want to interfere with the same. However this Court feels that an interest @ 7.5 % per annum instead of 9% per annum would be equitable. Further, awarding default interest @ 15 % per annum according to this Court is not just and proper. While upholding the compensation awarded by the Tribunal, this" Court sets aside the direction of the Tribunal to the Appellant-Insurance Company to pay default interest @ 15% per annum. Consequently the appeal is disposed of upholding the compensation of Rs. 1,86,000/- and directing the Appellant-Insurance Company to pay the said amount along with interest @ 7.5% per annum from the date of filing of the MAC case till realization.

8(Sic). The entire award amount along with interest as directed above shall be deposited by the Appellant before the Tribunal within* six weeks from the date of communication of this Judgment to the Tribunal. After the amount is deposited the same shall be disbursed proportionately to the claimants as per the stipulations made in the award.

9. The statutory deposit made before this Court along with interest accrued thereon be returned to the Appellant-Insurance Company on proper application by a crossed cheque/draft.

The Misc. Appeal is accordingly disposed of.

