(2007) 04 OHC CK 0062

In the Orissa High Court

Case No : M.A. No. 763 of 1999

Divisional Manager, Oriental Insurance Co. Ltd. — APPELLANT

Vs

Judhistir Gochhayat and Another — RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2007) 1 OLR 908 Supp

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

Bench : Single Bench

Advocate : G.P. Dutta and A. Jena, for the Appellant; A. Pattnaik and P.C. Pattnaik, for the Respondent

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. 556/97 (436/97) 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 injured Judhistir Gochhayat was working as a labourer 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 Judhistir sustained grievous injuries.

3. The owner of the offending vehicle did not contest the case. The Appellant-Insurance Company filed a written statement baldly denying the averments made in the MAC case, but then taking 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 claimant got three witnesses examined including himself as P.W.3 and exhibited 12 documents. On the other hand the Appellant-Insurance Company did not adduce any oral evidence, but then 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 injured and other facts into consideration, the Tribunal awarded a compensation of Rs. 62,500/ - 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 Injured 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 as a witness 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 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 committed by the Tribunal. So far as the allegation that the injured 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.

7. This is a case where a person has sustained grievous injuries in a motor vehicle accident, thereby causing a heavy financial loss and mental tension to him. He was an earning member of his family. Considering all these facts, in a spirit of Lok Adalat this Court feels that an award of Rs. 50,000/ - with interest @ 7.5 % per annum instead of Rs. 62,500/ - with interest @ 9% per annum would be just, proper and equitable and directs accordingly. Further, awarding default interest @ 15% per annum according to this Court is not just and proper. This Court therefore sets aside the direction of the Tribunal to the Appellant-Insurance Company to pay default interest @ 15% per annum.

8. Consequently the appeal is disposed directing the Appellant-Insurance

Company to deposit a sum of Rs. 50,000/ - with interest @ 7.5% per annum from the date of filing of the MAC case till realization 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 to the claimant as per the stipulations made in the award, by proportionately apportioning the same.

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.

