
(2004) 02 OHC CK 0003

In the Orissa High Court

Case No : Miscellaneous Appeal No. 281 of 1995

Divisional Manager, The New India Assurance Co. Ltd.

APPELLANT

Vs

Gantai Muduli and Another

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173(1)

Citation : (2005) 1 ACC 81 : (2004) 97 CLT 620

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

Bench : Single Bench

Advocate : S.S. Rao, for the Appellant; B.K. Mohanty, P.C. Pattnaik, B.K. Mohanta and M. Balabantaray, for the Respondent

Judgement

A.S. Naidu, J.—This is an appeal u/s 173(1) of the Motor Vehicle Act, 1988 filed by the New India Assurance Company Limited, inter alia, challenging the award dated 13.4.1995 passed by the 2nd Motor Accident Claims Tribunal (Southern Division), Berhampur in MAC No. 551/93 (327/93). The said claim case was filed by respondent Nos. " and 2 on account of death of their son in a motor accident. It is alleged that son of the claimants was travelling in a mini bus bearing registration No. OR-074297 and due to the rash and negligent driving of the driver of the said mini bus, it met with an accident on 15.4.1993 at 7.30 a.m., thereby causing his death.

2. The Tribunal on the basis of the evidence arrived at a finding that the age of the deceased was 18 years and his monthly income was Rs. 1000/-. On the basis of such finding, the Tribunal awarded a sum of Rs. 1 lakh as compensation with interest @ 9% per annum from the date of application, i.e., 5.7.1993 till realization.

3. The award passed by the Tribunal is assailed, mainly, on the ground that the age of the deceased was only 12 and not 18 years and that the Tribunal has not rightly assessed his monthly income. It is also submitted, rather forcefully by Mr. S. S. Rao, learned counsel for the appellant that the deceased was travelling on

the roof of the mini bus, thus he was also negligent and the insurance company is not liable to pay any compensation. Admittedly, the deceased was travelling in the mini bus. The Tribunal has also held that due to rash and negligent driving, the offending bus met with the accident. In view of the aforesaid cogent findings, I am unable to accept the submission that as the deceased was travelling on the roof of the bus, the claimants are not entitled to any compensation. But then there is some force on the second contention raised by Mr. Rao. Except adducing some oral evidence, the claimants had not proved the age of the deceased beyond all reasonable doubts. There is also some discrepancy with regard to the monthly income of the deceased. In ordinary course for determination of such issue, I would have remanded the matter to the Tribunal. But then, the occurrence took place as long back as in 1993. 14 years have passed in the meantime. The claimants- respondents, as submitted by their learned counsel, are passing their days through stringent financial difficulties. In my view prolonged litigation would not be beneficial to either of the parties inasmuch as the Insurance Company, which is otherwise liable to pay compensation, would be saddled with interest for further period. That apart, in consonance with Section 170 of the M. V. Act., the Insurance Company is estopped from challenging the quantum of compensation.

4. Taking into consideration all these factors, and after hearing the learned counsel for the parties, in a spirit of the Lok Adalat, I feel the Misc. Appeal can be disposed of by reducing the compensation to certain extent. Accordingly, I feel awarding a sum of Rs. 80,000/- in place of Rs. 1,00,000/- would be just, equitable and proper. I, therefore, dispose of this Misc. Appeal with a direction that the claimants shall be entitled to a compensation of Rs. 80,000/- only and not Rs. 1,00,000/-, with interest @ 9% per annum from the date of application, i.e., 5.7.1993 till date of realization. The amount deposited in this Court be returned to the learned counsel for the Insurance Company, and the Insurance Company is directed to deposit the entire compensation amount with interest before the Tribunal within eight weeks. The Tribunal is also directed to disburse the amount to the claimants as stipulated in the award.