
(2021) 04 OHC CK 0011
In the Orissa High Court
Case No : M.A.C.A. Nos.789 & 784 Of 2020

Divisional Manager, U.I.I. Co. Ltd.

APPELLANT

Vs

Kasturi Muni & Others

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2021) 04 OHC CK 0011

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : Santosh Kumar Mohanty, B. Pati, Pradeep Kumar Mishra

Final Decision : Dismissed

Judgement

Biswanath Rath, J

1. MACA No.789 of 2020 is an Appeal at the instance of Insurance Company involving judgment dated 18.03.2020 in MAC 142 of 2012 (4 of 2011-GDC), whereas MACA No. 784 of 2020 is at the instance of claimants again involving same judgment dated 18.03.2020 in MAC 142 of 2012 (4 of 2011-GDC) but for enhancement of compensation. For common facts and issues involved herein, this Court on consent of Claimants and Insurance Company takes up the hearing of the matters and dispose of both the Appeals by this common judgment.

2. Short background involving the case is that on 20. 10.2010 at about 11.00 P.M., while deceased Surendra Muni was travelling in a Car bearing Registration No.MH-O3J-8631 from Mumbai to Berhampur, Odisha along with two others on NH-5 near village of Patrunivalasa under Nandigam P.S. jurisdiction in the district of Srikakulam (A.P.), met with an accident with the Truck bearing Registered No.AP-31TU-5149, as a result of which, the driver and one of the occupant of the Car died at the spot and the deceased along with the other occupant sustained severe injuries. Soon after the accident, the injured deceased and other injured were shifted to RMS Hospital, Srikakulam and it is claimed that while both were

undergoing treatment, the deceased succumbed to injuries on 21.10.2010. It is alleged that the offending Truck was parked on the middle of the road without any indication of parking light, for which, the driver of the Car could not visualize the parking of the offending vehicle in the night and accident took place due to negligence act of the driver of the offending Truck. A police case was registered u/ ss.304(A)/338 of I.P.C. involving the accident, vide Nandigam P.S. Case No.98 of 2010, corresponding to Crime Case No.110 of 2011 in the court of learned J.M.F.C., Palasa (A.P.). Claimants claimed that the deceased was about 49 years at the time of accident and he was working as an Electrician in Dockyard, Mumbai and was getting monthly salary of Rs.23,271/-. It is also claimed that the deceased was the only earning member of the family. For the untimely death of the deceased, the claimants lost their only bread earner and led a miserable life. On the premises that the offending Truck was insured with the Insurance Company-O.P.2 therein and the claimants are the legal heirs of the deceased by the application involved claimed Rs.25,00,000/- (Rupees Twenty five lakhs) only as compensation from the Owner as well as the insurer of the vehicle.

3. Upon receiving notice, Owner-opposite party no.1 did not appear and prefer to remain absent, for which, the Owner was set ex parte on 26.9.2012.

4. Insurance Company-opposite party no.2 therein appeared through their counsel and filed the Written Statement denying the allegation against the Insurance Company. Insurance Company even disputed the alleged accident and death due to accident involving the offending vehicle. It is rather claimed that the offending truck was in stationary position and was parked on the left side of the road. It is rather claimed that for the negligent driving of the vehicle carrying the deceased and other passengers, the death has taken place. Insurance Company thus claimed that they are not liable for such negligence.

5. Basing on the pleadings, learned Tribunal framed the following issues:

"(i) Whether deceased Surendra Muni met with a road accident on 20.10.2010 at about 11 P.M. on NH-5 near village Patrunivalasa under Nandigam PS jurisdiction in the district of Srikakulam (A.P.) and the said accident was caused due to careless & negligent act of the driver of the Truck bearing Regd. No.AP-31TU-5149 ?

(ii) Whether the petitioners are entitled to get compensation ? If so, from whom and to what extent ?

(iii) Whether the petitioners are entitled to any other relief(s) ?"

6. Claimants to establish their respective case, examined two witnesses including one occupant of the vehicle. The claimants also exhibited a number of documents marked as Exhibits-1 to 14. On the other hand, Insurance Company though did not examine any witness, but it had relied on two exhibits, i.e. Exhibits-A and B. Based on the pleadings and materials available on record, Tribunal answered all the issues in favour of the claimants and also taking into account the materials

available on record came to hold that the Insurance Company-respondent no.2 is liable to pay the awarded amount of Rs.10,70,072/-(Rupees Ten lakhs Seventy thousand seventy two) only as compensation to the claimants along with simple interest @6% per annum from the date of filing of the claim, i.e. from 07.01.2011, till its payment within a period of two months from the date of award. Insurance Company-opposite party no.2 was however also given the liberty to realize the entire amount to be paid to the claimants from the Owner of the Truck. In this very proceeding itself, the Tribunal thereby adopted a method for realizing the compensation.

7. Claimants filing the appeal challenging the impugned judgment mostly on two grounds, which remains as follows :

"(B) For that, when the deceased was an occupant in the car and as per findings the accident took place due to the negligence of both the drivers, i.e. driver of the car and driver of the offending Truck and the deceased has no contribution towards the accident, and it's a case of composite negligence, the learned tribunal should not come to the conclusion that the claimants are entitled to 50% of the award. Hence the same is liable to be set aside and the award is liable to be modified and enhanced by the interference of this Hon'ble Court by allowing rest 50% of the award which was deducted illegally.

(C) For that, when the deceased about 55 years 4 months 5 days at the time of accident the age should be taken as 55 and multiplier should have been 11 instead of 9 and when the deceased was getting the monthly salary of Rs.23,271/- the learned tribunal should not have taken the income as Rs.20,835/-. Hence the award is liable to be enhanced by applying 11 multiplier and by holding the income of the deceased as Rs.23,071/- by deducting Rs.200/- as professional Tax only by the interference of this Hon'ble Court."

8. Advancing his submission Sri P.K. Mishra, learned counsel for the claimants-appellants in MACA No.784 of 2020 contended that for involvement of two of the vehicles in the accident and for there is no contribution of the deceased involving the accident, Tribunal reducing the compensation to 50% becomes bad. Further looking to the age of the deceased being 55 years and 4 months some odd days, taking the age of the deceased to be 55 years '11' multiplier instead of '9' multiplier ought to have been applied. Further so far as income of the deceased concerned, Tribunal also went wrong in considering the income of the deceased to be Rs.20,835/- per month, similarly interest on the date of application till award should have been at least @12% instead of @6% per annum.

9. Sri Mohanty, learned counsel for the Insurance Company in his opposition contended that for the grounds involving the Insurance Appeal, i.e. MACA No.789 of 2020 challenging the liability of the Insurance Company altogether contended that the entire award is bad and ought to be interfered with and modified accordingly. Sri Mohanty, learned counsel appearing for the Insurance Company, opposite party no.2 in MACA No.784 of 2020 and the appellant in MACA No.789

of 2020 taking this Court to the ground of challenge involving the Insurance Appeal reiterated his submission through ground nos.B, C, D and E, which reads as follows :

B) For that learned Tribunal desperately failed to appreciate the most vital testimony/documentary evidence adduced by the insurer-opp. Party No.2 to prove substantiate NO CONTRIBUTORY NEGLIGENCE which is the SPOT/SKETCH MAP/MVI Report exhibit-5 issued after threadbare inspection. This incriminating/ clinching evidence to put the case to strict proof as the Exhibit-5 suggest beyond an iota of any doubt that the offending Car dashed the "Parked/standing truck" which no way contributed to the accident/any negligence, much less.

C) For that in utter indulgence the learned Tribunal has ignored the most vital omission is the non-impletion of the other vehicle (car) involved in the accident as it was clear in the Final Form/Charge Sheet/ MVI Report. This categorically reveals non-application of mind and questionable judicial propriety, which cannot sustain scrutiny of Law.

D) For that the conclusion furnished over issue No.1 at page-8 is definitely disturbing as dramatically opposed to the concluding/ordering portion of page-14, wherein entire liability saddled on the appellant above an indemnification. But the benefit of doubt was extended to the other vehicle, i.e. Car involved by the learned Tribunal in utter indulgence. Therefore the fallacious conclusion and contradictory discussion at page-8 as against of concluding para page-14, reveals poor judicial propriety/misconception and against the weight of evidence. Thus, it is held that driver of the offending truck and the driver of the car are equally responsible for the accident and respectively 50:50% each. Above contradiction there is beyond doubt as the learned Tribunal was erroneous while dealing with the issue No.1 but also fell in grave error not sustaining his own stand taken earlier during answering issue while concluding the self same error by himself at the ordering portion which cannot sustain judicial appellate scrutiny. Hence, the same is liable to be set-aside.

E) For that the parking of the so called offending truck the spot map/sketch map prepared by local police, MVI representatives there in clearly shows that the high speed and negligence of the car driver was causing the accident and truck was parked inside the service lane on the left side leaving area of footpath."

10. It is then for the ground of challenge, the counsel for the Insurance Company submitted that for Ext.5 a vital material, there was no occasion on the part of the Tribunal coming to conclusion that there is contributory negligence. Learned counsel for the Insurance Company thus contended that for the observation of the Tribunal in the earlier part, the finding of the Tribunal got dramatically opposed to its discussion. Learned counsel for the Insurance Company also challenged the award on the premises that the compensation so granted by the Tribunal is otherwise also highly excessive.

11. Sri P.K. Mishra, learned counsel appearing for the claimants-respondents in

MACA No.789 of 2020 however opposed the contentions raised by the Insurance Company in their appeal and on the other hand attempted to justify the finding of the Tribunal being based on clear observation.

12. Considering the rival contentions of the parties, this Court while finding no dispute with regard to the accident involving a Car and a Truck, further the death of the deceased, the bread earner of the claimants as well as the driver of the Car died on the spot. For a detailed M.V. report, this Court also finds there cannot be any objection to the contents of the M.V. report, Ext.5. From the claims of the parties and discussions of the Tribunal involving Ext.5, a certified copy of the accident report, attaching therein a map of the spot, this Court finds on getting through the same, the Tribunal has come to categoric observation that for the MVI report there was no mechanical defect in either of the vehicles involved in the alleged accident. From the spot map, it is evident that the alleged offending Truck was parked on extreme left side of the road, hence the Tribunal has come to a conclusion that it cannot be presumed that the Truck to which the Car dashed was not visible to the driver of the Car for a considerable distance. There was also grave defect on the part of the claimants in not even examining the driver of the Truck allegedly involved in the accident. There is even no occurrence witness examined. The Tribunal has also categorically observed that the spot of accident was on National Highway No.5, which was a four lane road and there was clear white mark on both sides of the road with a road divider in the middle. It is also recorded that the accident took place on the left side of the road leading from Tekkali to Palasa. This spot report also clearly reveals in the left side there was also white marking on the middle and the width of the road on the accident spot from the middle white marking to the road divider was 12 feet. The offending Truck was parked on the left side of the other 12 feet portion of that road. Further the report also clearly reveals that there was skid mark of 25 meters upto the spot of the accident clearly establishing that the Car was in high speed and seeing stationed Truck from a considerable distance, the driver of the Car tried to control the vehicle but he could not able to control the same and it ultimately dashed from the behind of the offending Truck. In the above clear observation of the Tribunal being substantiated through Ext.5, this Court finds, the finding of the Tribunal that there was composite and contributory negligence on the part of the driver of the Car in causing accident becomes erroneous. From the above it can safely conclude that the driver of the Car is only responsible. Unfortunately the claimants did not involve either the Owner of the Car or the Insurance Company involving the Car. For the aforesaid clear material, this Court finds the award of the Tribunal remains wholly contrary to the materials available on record. For there is no involvement of the Car and the Insurance Company involving the Car, the claimants failed to establish their claim properly.

13. In the circumstance, this Court interfering in the impugned award for the offending truck not liable for the cause of the accident consequently the Insurance Company the appellant also not liable accordingly interferes in the award and sets aside the award involving MAC No.142 of 2012 (4/2011-GDC),

thereby allowing appeal, i.e. MACA No.789 of 2020. The appeal, i.e. MACA No.784 of 2020 does not survive and thus dismissed. In the circumstance, however there is no order as to cost.