
(2005) 01 OHC CK 0071

In the Orissa High Court

Case No : Miscellaneous Appeal No. 198 and 603 of 1997

Divisional Manager, United India Insurance Co. Ltd.

APPELLANT

Vs

Banamali Sahu (dead) and after him Smt. Radha Sahu and
Another
 Banamali Sahu (dead) and after him Smt.
Radha Sahu and Another Vs Smt. Sarojini Das and Another

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(1)

Citation : (2005) 01 OHC CK 0071

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : M. Sinha, in M.A. No. 198 of 1997 and S.N. Kar, P. Misra and P.K. Misra, in M.A. No. 603 of 1997, for the Appellant; Patitapaban Misra, B.K. Panda, P.K. Misra and S.N. Kar for Respondent 1 in M.A. No. 198 of 1997 and M. Sinha, for Respondent 2 in M.A. No. 602 of 1997, for the Respondent

Judgement

L. Mohapatra, J.—Both the appeals are directed against the judgment and award dated 21st January, 1997 passed by the learned 2nd Motor Accident Claims Tribunal, Cuttack.

2. M.A. No. 198/97 have been filed by the Insurance Company challenging the award and M.A. No. 603/97 has been filed by the claimant for enhancement of the award. Since both the appeals arise out of the same award they were heard together.

3. The case of the claimant is that on 26.4.1992 at about 4.00 P.M. while he was returning to his village, the offending Trekker bearing Registration No. ORY-05-2517 being driven in a rash and negligent manner in a high speed dashed against a Truck bearing Registration No. ORY-5637. As a result of the accident, the claimant who was one of the occupants of the Trekker was seriously injured and removed to Sub-divisional Hospital at Jajpur for treatment. The claimant was bedridden for about two months and, accordingly, he filed the

application for compensation of Rs. 98,000/- from the owner as well as the Insurance Company. The further case of the claimants that at the time of accident he was 45 years old and was earning Rs. 2,500/- per month as a vegetable vender and because of the accident his earning capacity has been lost.

4. The owner of the vehicle was set ex parte and he did not contest the proceeding. The Insurance Company filed the written statement denying the allegations made by the claimant and called upon the claimant to prove the accident as well as the injury sustained by him due to such accident.

5. The Tribunal framed five issues and found that the Trekker was being driven in a rash and negligent manner resulting in the accident and the claimant being an occupant of the said Trekker sustained injuries due to such accident. Considering the age of the claimant as well as his income and the money spent towards the treatment, the Tribunal found that compensation of Rs. 30,000/- would be just and proper and accordingly passed the award directing the Insurance Company to pay the amount having further found that the offending vehicle was covered by a valid policy covering the date of accident.

Mr. Sinha, learned Counsel appearing for the Insurance Company challenged the award only on one ground. According to Shri Sinha, the offending vehicle had been registered as a private car with sitting capacity of 8+1 but the same was being used as a Taxi. Therefore, the claimant is not entitled to any compensation. Shri Sinha drew the attention of the Court to the deposition of the claimant and submitted that admittedly the claimant had travelled in the offending vehicle as a passenger having paid fare of Rs. 2/- and, therefore, he is not entitled to any compensation. The learned Counsel appearing for the claimant on the other hand submitted that the policy though indicates that it had been made for a private car additional premium had been paid to carry eight passengers and, therefore, the Insurance Company cannot escape the liability of payment of compensation.

Apart from the above, the learned Counsel appearing for the claimant submits that the claimant having received various injuries and having remained confined to bed for about two months the amount of compensation granted by the Tribunal should be enhanced.

6. From the application, filed by the claimant u/s 166(1)(a) of the Motor Vehicles Act, 1988, it appears that on 26.4.1992 while he was returning to his village in the offending vehicle from Jarka Chhaka, the offending vehicle collided with a Truck bearing Registration No. ORY-5637 which was coming from the opposite direction. The specific case of the claimant is that the offending vehicle was being driven in a rash and negligent manner at a high speed which resulted in the accident. As a result of such accident, the claimant sustained fracture on his right elbow joint apart from other injuries on his person. He was taken to Jajpur Town Sub-Divisional Hospital for treatment. He was aged about 45 years at the time of accident and was earning Rs. 2,500/- per month as a vegetable vender. It is

further pleaded that due to such injuries the claimant is completely disabled and has lost his earning capacity. The claimant was examined as P.W. 1. In cross examination, he has stated that he was travelling in the offending vehicle along with seven other passengers and he had paid Rs. 2/- towards the fare. It is, therefore, clear that the claimant was travelling in the offending vehicle as a passenger. The question that comes for consideration is whether the Insurance Company can be made liable for payment of the compensation under the policy. A copy of the policy is available in the records and the same has been exhibited as Ext. 1. At the top of the policy it is written "private car" and the sitting capacity is mentioned as 8+1. However, it further appears from the policy that additional premium of Rs. 200/- had been paid to carry eight number of passengers. Faced with the aforesaid policy, it was contended by Shri Sinha, learned Counsel for the Insurance Company that the entry relates to only sitting capacity and does not speak of passengers. I am unable to accept such a contention since it is clearly mentioned in the policy that Rs. 200/- additional premium had been paid for eight passengers. In view of the above, there cannot be any doubt that the vehicle had been insured with the present Insurance Company with permission to carry eight passengers. The claimant being one of the passengers who got injured in the accident is not only entitled to compensation but also the Insurance Company is liable to indemnify the same. I, therefore, do not find any merit in M.A. No. 198 of 1997.

7. Learned Counsel for the claimant submitted that considering the nature of injury sustained by the claimant and the period of hospitalisation as well as loss of earning capacity, Rs. 30,000/- awarded by the Tribunal requires to be enhanced. The claimant in his deposition has stated that his right hand was fractured and for one year he remained under the treatment of Doctors. The hand was plastered twice. One Dr. Prasanna Kumar Samal, examined as P.W. 3, in his deposition he has stated that the claimant was referred to the hospital at Jajpur and he was treated from 26.4.1992 by him. He has also stated that the claimant was coming to him for check-up as he had compound fracture in the right elbow joint. It further appears from the deposition of the Doctor that the claimant had to undergo prolonged treatment due to some complications arising out of the injuries sustained by him in course of the accident. The Tribunal relying upon the document Ext. B series found that the claimant has spent Rs. 4,585.35 paise towards medicine and taking his income at the rate of Rs. 50/- per day awarded Rs. 30,000/- as compensation. Considering the nature of injuries sustained by the claimant and the period of treatment undergone as stated by P.W. 3, I am of the view that the expenses towards the treatment as well as the loss of earning capacity should be assessed at a consolidated sum of Rs. 40,000/- (Rupees forty thousand) instead of Rs. 30,000/- as awarded by the Tribunal.

8. In view of the above, M.A. No. 198 of 1997 is dismissed and M.A. No. 603 of 1997 is allowed directing the Insurance Company (Appellant in M.A. No. 198 of 1997) to pay compensation of Rs. 40,000/- (Rupees forty thousand) to the

claimant within a period of three months from the date of communication of the judgment. If the Insurance Company fails to pay the amount, interest at the rate allowed by the Tribunal shall be calculated on the amount of compensation payable till realization.