

(2022) 05 OHC CK 0007
In the Orissa High Court
Case No : MACA No. 667 Of 2009

D.M., New India Assurance Co. Ltd

APPELLANT

Vs

Saraswati Seth And Others

RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2022) 05 OHC CK 0007

Hon'ble Judges : B.P. Routray, J

Bench : Single Bench

Advocate : B.Das Mohapatra, P.C.Pattnaik,

Final Decision : Disposed Of

Judgement

B.P. Routray, J

1. Both the appeals are directed against the judgment of the learned M.A.C.T., Phulbani dated 8th December, 2008 passed in M.A.C. No.115 of 2003, wherein compensation to the tune of Rs.59,500/- along with interest @6% per annum has been granted in favour of the claimants.

2. The claimants are the wife and three sons of the deceased. Their case is that the deceased was serving as a Peon in Pairaju Gram Panchayat and on the date of accident he was travelling with 27 bags of Government paddy in the offending vehicle i.e., the Tractor and Trolley bearing Registration No.OR-12-1833 and OR-12-1834. The deceased fell down from the vehicle due to rash and negligent driving of the driver and died at the spot.

Initially, F.I.R. was lodged in Gochhapada P.S.Case No.42 dated 31st December, 1996 alleging the murder of the deceased, which was subsequently negated by the concerned Criminal Court with the finding that the deceased died due to motor vehicular accident.

3. The Tribunal upon adjudication of the claim directed the Insurer i.e., New India

Assurance Co. Ltd. to indemnify the compensation amount for the owner.

4. MACA No.667 of 2009 has been filed by the Insurer challenging the award mainly on the ground that the deceased was a gratuitous passenger in the offending vehicle and thus, the Insurer is not liable to pay compensation. Their case is that the offending Tractor was licensed for agricultural purpose only and it had no permit to attach a trolley to convert the tractor as goods carriage vehicle. As such, the Insurer has no liability in this case.

5. MACA No.947 of 2009 has been filed by the claimants for enhancement of the compensation amount on the ground that the Tribunal has failed to appreciate the income of the deceased as a Peon of Gram Panchayat as well as a cultivator. As per the claimants, the monthly income of the deceased should at least be taken at Rs.3,000/-per month in terms of the principles decided in the case of Laxmi Devi and Others vs- Mohammad Tabbar and Another, (2008) 12 SCC 165 and, accordingly the amount of compensation be enhanced suitably.

6. Perusal of the impugned judgment reveals that age of the deceased has been accepted at 60 years based on the postmortem report and the comparative age of the wife and sons of the deceased. Multiplier 5 has been applied for the purpose. The aforesaid facts about the age and consequential multiplier are disputed by the claimants and as per them, the age of the deceased should be accepted as 55 years to apply the multiplier of 11 instead of 5.

7. The owner of the vehicle did not come to contest the case either before the Tribunal or before this Court.

8. Coming to examine the contention of the claimants on application of multiplier, it is seen that the age of the deceased mentioned in the postmortem report was 55 years on the date of accident. But the Tribunal taking the age of the wife of the deceased as 55 years on the date of filing of the claim application in the year 2003 has guessed that the deceased must be around 60 years on the date of accident. It appears that the Tribunal has forgotten the date of accident as 29th December, 1996. Therefore, the Tribunal has committed error apparent on the face of the record, which is corrected to the effect that the deceased was 55 years old on the date of accident as mentioned in the postmortem report. Accordingly, multiplier 11 is taken for the purpose of computation of compensation.

9. So far as the income of the deceased is concerned, the claimants have not adduced any documentary evidence in support of the same. Despite their claim being that the deceased was working as a Peon in the Gram Panchayat Office, neither any salary certificate nor any other documents was produced on record and no specific evidence has been brought on record to suggest any definite income of the deceased. The eldest son of the deceased coming to the witness box as P.W.1 has only stated to the effect that the deceased was serving as a Peon in the Gram Panchayat Office as well as a cultivator. Admittedly, as per the evidence of P.W.1, they don't have any cultivable land. Therefore, in absence of

any specific material, the annual income determined by the Tribunal at Rs. 15,000/- in terms of Section 163(A) of the M.V. Act cannot be faulted with. Adding 10% thereto towards future prospects and deducting 1/3rd towards personal expenses, applying multiplier 11 as stated above, and further adding Rs.70,000/- towards conventional heads including spousal consortium for the widow, the compensation amount is enhanced to Rs.1,91,000/-.

10. Next coming to the challenges advanced by the Insurer, it is seen that the offending Tractor had no valid permit to attach the Trolley with it. The driver had the license to drive the tractor only and the insurance policy was for the tractor only. It has been clearly mentioned in the policy that the same will be used for agricultural purpose only. Secondly, no material is there to reveal that the deceased was authorized to travel in the vehicle with paddy bags being the Peon of Gram Panchayat Office and the paddy bags belonged to Panchayat. The seizure list is silent about the same. So viewing from any angle, the deceased seems to be a gratuitous passenger in the offending vehicle at the time of accident as travelling of the deceased in the same is the admitted case of all parties.

11. In the impugned judgment at Paragraph-7 though the Tribunal has concluded that the owner alone is liable to pay the compensation and the Insurer is not liable for the same, but strangely concluded in the ordering portion that the Insurer should pay the compensation with right to recover from the owner. As the law has been settled on this point, such direction of the Tribunal to pay the compensation and thereafter recover the same from the owner is not sustainable. As such, the Insurer i.e., New India Assurance Co. Ltd. is absolved of its liability to pay the compensation.

12. In the result, the owner of the offending vehicle-Respondent No.1 in MACA No.947 of 2009 and Respondent No.5 in MACA No.667 of 2009 is directed to pay compensation of Rs.1,91,000/- (one lakh ninety-one thousand only) to the claimants along with interest @6% per annum from the date of filing of the claim application by depositing the same before the learned Tribunal, which shall be disbursed in favour of the claimants on such terms and proportion to be fixed by the Tribunal.

13. The statutory deposit made by the Appellant in MACA No.667 of 2009 with accrued interest thereon be refunded to him on proper application.

14. With the aforesaid directions, both the appeals are disposed of.