
(2013) 08 OHC CK 0091
In the Orissa High Court
Case No : MACA No. 378 of 2013

D.M., O.I. Co. Ltd.

APPELLANT

Vs

Irma Tirkey

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2013) 08 OHC CK 0091

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S.C. Parija, J.

Misc. Case No. 992 of 2013

1. This is an application by the appellant-Insurance Company for condonation of delay of 5 days in filing the appeal. Considering the submissions made and the grounds taken in the application, delay in filing the appeal is condoned. Misc. Case is accordingly disposed of.

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2. Though this matter was listed for orders today, on consent of the learned counsel for the parties, the same is taken up for final disposal.

3. Heard learned counsel for the parties.

4. This appeal by the appellant-Insurance Company, is directed against the judgment/award dated 07.02.2013, passed by the 3rd Motor Accident Claims Tribunal, Rourkela, in MAC Case No. 89 of 2010, awarding an amount of Rs. 26,35,800/- as compensation along with interest @ 6% per annum from the date of filing of the claim application, till payment.

5. Learned counsel for the appellant-Insurance Company submits that as the FIR (Ext. 1) and the Inquest Report (Ext. 4) clearly shows that the driver of the

vehicle (Truck) no. OR-23/9123 was rash and negligent in causing the accident, learned Tribunal erred in ignoring the same and saddling the entire liability on the present appellant, as the insurer of the offending vehicle (Bolero) no. OR-14-L/5857. In this regard, it is submitted that as the statement of the witnesses recorded u/s 161 Cr.P.C. during the investigation by the police clearly shows that the offending truck was rash and negligent in causing the accident, learned Tribunal was not justified in overlooking the said materials on record and fixing the liability on the owner of the offending vehicle (Bolero). Accordingly, it is submitted that as both the vehicles involved in the accident were equally responsible for causing the accident, the award should have been equally apportioned between the insurers of the two vehicles.

6. Learned counsel for the appellant further submits that as the assessment of the compensation amount is not proper and justified and further as the driver of the offending Bolero vehicle did not possess a valid and effective driving licence at the time of the accident, the Insurance Company is entitled to the right of recovery.

7. On perusal of the impugned award, it is seen that on the pleadings of the parties, learned Tribunal had framed the following issues:

(i) Whether the accident took place at Beherapat Chowk on 12.1.2010 due to rash and negligent driving of the offending Bolero bearing No. OR-14-L/5857, causing death of Markus Tirkey?

(ii) Whether the accident took place for the rash and negligent driving of the driver of the vehicle OR-23/9123 (Truck) on that date?

(iii) Whether the petitioners are entitled to get any compensation, if so, from whom and to what extent?

8. Considering the evidence on record, both oral and documentary, learned Tribunal has come to hold that the driver of the offending vehicle was rash and negligent in causing the accident. In this regard, it is seen that the learned Tribunal has taken into consideration the evidence of P.W.1, who is the wife of the deceased and was present in the offending Bolero vehicle at the time of the accident. Further, it is seen that the police after investigation has submitted Final Form (Ext. 3) against both the vehicles. Accordingly, on the basis of the evidence of P.W.1, who was eye witness to the occurrence and the police papers, learned Tribunal has come to the specific finding that the driver of the offending Bolero was rash and negligent in causing the accident.

9. As regard the assessment of the compensation amount, it is seen that the learned Tribunal has taken into consideration the fact that the deceased was aged about 48 years at the time of his accidental death and was an employee in HAL, Sunabeda. Being a highly skilled technician and on completion of 15 years of continuous service in the organization, the deceased was getting the monthly salary of Rs. 37,040/-, as per the Pay Slip (Ext. 9). After deductions, learned

Tribunal has taken the monthly salary of the deceased at Rs. 25,200/- in calculating the compensation amount payable. Learned Tribunal has further awarded Rs. 15,000/- towards general damages.

10. Considering the submissions made by the learned counsel for the parties and keeping in view the findings of the learned Tribunal given in the impugned award with regard to the liability of the appellant-Insurance Company to pay the compensation amount, as the insurer of the offending vehicle, the same cannot be faulted.

11. Considering the findings of the learned Tribunal with regard to the quantum of compensation amount awarded and the basis on which the same has been arrived at, I feel, the interest of justice would be best served, if the awarded compensation amount of Rs. 26,35,800/- is modified and reduced to Rs. 24,00,000/- which is payable to the claimants along with interest @ 6% per annum. The impugned award is modified to the said extent.

12. The appellant-Insurance Company is directed to deposit the modified compensation amount of Rs. 24,00,000/- along with interest @ 6% per annum from the date of filing of the claim application with the learned Tribunal within six weeks hence. On deposit of the amount, the same shall be disbursed to the claimants proportionately, as per the direction of the learned Tribunal given in the impugned award.

13. It is however open for the appellant-Insurance Company to seek recovery of the compensation amount from the owner of the vehicle, if recoverable, in accordance with law.

14. The statutory amount deposited in the Registry of this Court along with the accrued interest thereon shall be refunded to the appellant-Insurance Company, on production of receipt showing deposit of the modified compensation amount and interest with the Tribunal.

15. MACA is accordingly disposed of. Issue urgent certified copy as per rules.