
(1976) 03 OHC CK 0005
In the Orissa High Court
Case No : M.A. No. 209 of 1974

General Manager, Orissa Road Transport Corporation	APPELLANT
Vs	
Juma Bibi and Others	RESPONDENT

Date of Decision : 01-03-1976

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1977) ACJ 327

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : A.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

B.K. Ray, J.—This appeal is directed against the award of the 2nd Motor Accidents Claims Tribunal, Cuttack granting compensation of Rs. 22,000/- with interest at the rate of 6 per cent per annum with effect from the date of application till the date of payment with costs of Rs. 200/- to the Respondents on account of the death of Isrial Khan in a motor accident against the State Transport Service represented by its Director, the original Appellant in the present appeal. During the pendency of this appeal the State Transport Service having been converted to a corporation represented by the General Manager, Orissa State Road Transport Corporation, the latter has been substituted in place of the Director and has been permitted to continue the appeal. Hence the General Manager, Orissa State Road Transport Corporation is the present Appellant.

2. The case of the Respondents before the Tribunal was as follows: Isrial Khan, a constable, was returning from the S.C.B. Medical College Hospital on a bicycle On 5.7.73 at about 4.30 p.m. after coming out of the hospital compound through its main gate to the main road. While he was going on the cycle on the left side of the road the motor bus bearing registration No. ORU 764 coming from behind in a most rash and negligent manner without blowing horn dashed against the

cyclist who fell down on the road and got seriously injured. Isrial Khan was thereafter removed to the hospital where he succumbed to his injuries on 10.7.73. On the date of accident Isrial was getting a pay of Rs. 193/- per month and had future prospects of promotion. The Respondents used to be maintained by Isrial. So, by the death of Isrial the Respondents sustained a loss of Rs. 45,000/- which the Appellant was bound to pay.

On these allegations the Respondents filed a claim petition u/s 110A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal.

3. The Appellant before the Tribunal registered the claim of the Respondents by saying that there was absolutely no rashness or negligence on the part of the driver of the motor bus who was driving it at the time it got involved in the accident; that the driver was all along blowing horn; that the bus was moving in a normal speed at the relevant time and that the accident occurred because Isrial who was going in front of the bus on his cycle on the left side of the road suddenly changed side and wanted to go to the right side of the road when the bus was at a short distance from him, and so, in spite of the driver of the bus applying brake Isrial dashed against the bus with his cycle getting himself injured.

4. After enquiry the Tribunal held that the accident resulting in the death of Isrial was due to the rash and negligent manner of driving of the bus and the Respondents were entitled to be compensated to the tune of Rs. 22,000/- with interest and costs as mentioned above.

" Hence the present appeal.

5. In course of hearing of the appeal learned Standing Counsel for the Appellant vehemently challenges the correctness of the finding of the Tribunal that the accident occurred due to rashness and negligence on the part of the driver of the bus. The evidence in the case discloses that at the place of the accident the road was empty and that the breadth of the road at the point of accident was such that two vehicles could safely pass over it simultaneously leaving two cubits space on either side. On the basis of the evidence of the O.P. Ws. to the effect that as the right front bumper of the bus collided with the rear wheel of the cycle, it is contended that the Appellant's case that as the cyclist suddenly turned side the accident occurred should be accepted. The evidence of P. Ws. 3 and 4 on the other hand, discloses that the bus knocked down the cyclist from behind. Their evidence further shows that there was lot of space on either side of the cyclist at the time of the accident and if the driver had control over the bus he could have easily avoided the accident. Nothing has been brought out from the evidence of these two witnesses to discredit them. On the other hand, the evidence of O.P.W. 2 shows that the driver saw the cyclist from a distance of 20 yards from behind. According to this witness, as soon as the driver saw the cyclist he started applying brake to the bus. This evidence cannot be believed, because if that were so, there would have been no accident at all. It is well settled that as between a cyclist and a driver of a motor bus the latter's

responsibility to use care and diligence is greater. The driver, in my opinion, has failed to discharge his responsibility with adequate care. After carefully scrutinising the evidence on record and hearing the learned Counsel for both parties at length I am convinced that the Tribunal has rightly held that the accident occurred due to the rash and negligent driving on the part of the driver.

6. Regarding quantum P. W. 2 has proved the pay of the deceased on the date of the accident to be Rs. 202/- per month as per Ext. 1. There is nothing in the cross-examination of P.W. 2 to disbelieve his testimony. P.W. 1 has said that the monthly contribution of the deceased towards the maintenance of his family was to the extent of Rs. 100/- to Rs. 110/-. This evidence also is not rebutted by the Appellant. On the other hand, both the O.P. Ws. examined on behalf of the Appellant have stated that they have no idea about the income and other details of the deceased constable. In view of this, the Tribunal has come to the conclusion that the deceased was contributing at least Rs. 100 per month for the maintenance of his family spending the balance of Rs. 102/- to meet his personal needs. The deceased was 42 years on the date of the accident according to the evidence of P.W. 2. The deceased had he lived would have retired at the age of 60 years because he was a Class IV servant. From this it follows that the deceased had he lived up to the date of superannuation would have earned his pay for another 18 years. The monthly contribution of the deceased for the maintenance of the Respondents having been accepted to be Rs. 100/- the deceased would have contributed Rs. $100 \times 12 \times 18 = \text{Rs. } 21,600/-$ for the maintenance of the Respondents. Evidence has been led on the side of the Appellant that the wife of the deceased, one of the Respondents, will get pension at the rate of Rs. 65.50 per month from 10-7-73 to 9-7-80 and thereafter at the rate of Rs. 39.30 till her death or re-marriage. Taking the life expectancy of the wife to be 70 years and her age at the time of death of her husband being 34 years she would be entitled to pension of Rs. $65.50 \times 12 \times 7$ plus Rs. $39.30 \times 12 \times 26 = 17,763.60$. It is contended by the learned. Standing Counsel that this amount should have been deducted by the Tribunal from Rs. 21,600/-. The Tribunal, however, has not accepted the evidence led on behalf of the Appellant before it to the effect that the wife of the deceased is to get Rs. 17,763.60 as pension in the absence of any order to show that the wife would get the said sum as pension. Before me also, nothing has been shown that the wife will get Rs. 17,763.60 as pension. In these state of thing the Tribunal has not accepted this part of the Appellant's case. But the Tribunal has accepted the case of the Appellant that the gratuity of Rs. 1,310/- received by the wife of the deceased has to be deducted. In this connection on behalf of the Respondents reliance is placed upon a decision reported in Bhagwanti Devi and Others Vs. Ish Kumar and Others, saying that the benefits received by the legal representatives of a person who has died in a motor accident such as, life insurance policy, pension, gratuity and provident fund shall be excluded from consideration in determining the amount of compensation. But since no cross-objection has been preferred by the Respondents against that part of the Tribunal's order deducting Rs. 1,310/- from

the compensation payable to the Respondents. It is not possible to accept the argument advanced by the learned Counsel for the Respondents now that the sum of Rs. 1,310/- has been wrongly deducted. The Tribunal has further observed that after retirement the deceased had he lived would have drawn Rs. 97/- per month as his pension and out of that amount he would have contributed Rs. 47/- per month for the maintenance of his family for another 10 years, the life expectancy of the deceased having been taken to be 70 years. It appears from the impugned award that while calculating the personal expenditure of the deceased before superannuation the Tribunal has estimated the personal expenditure of the deceased at Rs. 102/- per month. That being so, the Tribunal is wrong in saying that after retirement the deceased had he lived would have contributed Rs. 47/- per month for the maintenance of his family keeping Rs. 50/- for his own personal needs out of the monthly pension of Rs. 97/-. This calculation of the Tribunal does not stand to reason in the absence of any evidence that the personal expenditure of the deceased after his retirement would have been reduced to Rs. 50/- from Rs. 102/- per month. It, therefore, follows that the Respondents have sustained a loss of Rs. 21,600/- minus Rs. 1,310/- = Rs. 20,290/- on account of the death of Isrial Khan, the contribution which the deceased had he lived would have made towards the maintenance of his family after superannuation being excluded. Deducting from this amount 15 percent towards lump-sum payment and uncertainties of life the Respondents are entitled to Rs. 17,390/- as compensation together with interest on the said sum at the rate of 6 per cent per annum from the date of application till the date of payment with a consolidated cost of Rs. 400/-.

7. In the result, the appeal is allowed in part and the impugned award is modified. The Respondents are declared to be entitled to Rs. 17,390/- together with interest at the rate of 6 per cent per annum from the date of application till the date of payment as compensation and Rs. 400/- towards consolidated cost awarded by the Tribunal. The Appellant shall be liable to pay the entire amount thus held to be payable to the Respondents. There will be no order for costs of this Court.