(1986) 02 OHC CK 0001

In the Orissa High Court

Case No : Misc. Appeal No. 260 of 1981

Hadibandhu Mohanty APPELLANT

Vs

Uttara Devi and Another RESPONDENT

Date of Decision : 05-02-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110A(1), 110B, 110D

Citation : (1986) 02 OHC CK 0001

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

Bench : Single Bench

Advocate : P.K. Parida and R.C. Rath, for the Appellant; S.D. Das, Asok Mohanty, B.P. Das and H.M. Dhal, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939 (in short "the Act") has been preferred by the driver against the order awarding compensation of Rs. 15,000/- to the claimant making him jointly and severally liable with the owner of the vehicle (Respondent No. 2).

2. The facts, in short, in this case out of which the claim arises are as follows:

On 25.4.1977, ORS 9349, a passenger bus of the Orissa State Road Transport Corporation, driven by the Appellant dashed against Jaswanta Das resulting in his death on the spot. The mother of the deceased being the class I heir under the Hindu Succession Act, filed an application u/s 110-A of the Act claiming Rs. 60,000/- as compensation for loss of dependency and Rs. 100/- for loss on account of the damage to the cycle of the deceased.

3. The father of the deceased was examined as PW 1 and another witness who immediately after the accident reached the spot was examined as PW 2. The certified copy of the report of the Motor Vehicle Inspector and the certified copy of the post-mortem report were produced and marked as Exh. 1 and 2. On behalf of the opposite parties, the Appellant was examined as OPW 1.

4. On a careful consideration of the materials on record, the Tribunal rejected the theory of contributory negligence of the deceased and squarely blamed the Appellant for negligent driving of the vehicle causing the death of Jaswanta Das as a result of the accident. The Tribunal determined the loss to the family or. account of death of Jaswanta to be Rs. 5,400/-per annum. Deducting one-third of the said amount to be the personal expenditure of the deceased, it held that Rs. 3,600/- is the contribution of the deceased to the family. The family of the deceased having his parents and younger brother: the Tribunal calculated the share of the Petitioner Respondent No. 1 to be Rs. 1,200/- per annum. Applying the principle of 15 times multiplier, it came to the conclusion that the claimant was entitled only to Rs. 18,000/-. From out of that one-sixth was deducted towards the benefit of lump sum payment and the award was confined to Rs. 15,000/-.

5. In this appeal, the Appellant while pressing to apply the principle of contributory negligence, submitted that the amount of compensation should have been further reduced and the entire amount ought to have been directed to be paid by the owner. The claimant not being satisfied with the quantum of compensation has preferred cross-objection for enhancement of the compensation amount and for payment of the entire loss of dependency to her. The owner of the vehicle has not challenged its liability or the quantum by filing appeal or cross-objection.

6. In view of the fact that the determination is assailed by both parties, I have carefully considered the materials to find out the correctness of the same.

7. On perusal of the materials on record, I am satisfied that the finding of the Tribunal that the deceased had no contributory negligence is justified and is unassailable. In view of the report of the Motor Vehicle Inspector indicating the skid mark and damage to the cement pillar, the evidence of the Appellant as OPW 1 is not acceptable.

8. Coming to the question of compensation payable, the annual dependency determined at Rs. 3,600/- by the Tribunal is not correct. The monthly contribution of the deceased to the family could not have been Rs. 450/-. The evidence of PW 1, the father of the deceased is that the deceased was giving Rs. 400/- to Rs. 450/- per month out of his earnings towards household expenses. A portion of the said money was being utilised for cultivation. The father of the deceased does not disclose the area of the land cultivated by him. From his evidence it is seen that the deceased was doing business in food grains and was also repairing cycles and selling stationery articles in villages. It is difficult to appreciate the earning to be Rs. 450/- per month. However, in the absence of any other evidence, the minimum indicated in the evidence of PW 1 can be accepted which comes to Rs. 400/- per month to be the contribution to the family. As has been adopted by the Tribunal, one-third is to be taken to be the personal expenses of the deceased. The monthly contribution to the family comes to Rs. 266/- which brings the annual contribution to Rs. 3,192/- or in

round figure it would come to Rs. 3,000/- per year. Applying the theory of 15 times multiplier, the total loss of dependency would come to Rs. 45,000/-. After deduction of one-sixth towards uncertainties and benefit of lump sum payment, the total compensation payable comes to Rs. 37,500/-.

9. u/s 110-A (1) (b) all or any of the legal representatives of the deceased can file the application. Under Clause (c), an agent duly authorised by all or any of the legal representatives of the deceased may also file the application. The proviso to Section 110-A (1) requires that the legal representatives who have not joined the claimant are to be impleaded as Respondents to the application. Under Schedule I to the Hindu Succession Act, the mother being a class I heir, is to be the legal representative of the deceased son. Father is a class II heir and therefore would not be a legal representative.

10. The provision u/s 110-A is for the benefit of the claimants and is to be interpreted in favour of the claimants and not to their detriment. The proceeding before the Tribunal is of a summary nature and wide power has been given to the Tribunal to determine the just compensation. The purpose of adding the other legal representatives as Respondents is to protect their v. interest while awarding compensation, since u/s 110-B the Tribunal has been vested with the power to specify the person or persons to whom compensation shalf be paid. In this case, the father of the deceased has been examined as a witness. The mother has made the application. Therefore, there is no scope for affecting the interest of any legal representative. A strict compliance of the requirement u/s 110-A, in the circumstances of this case, would be to the prejudice of the legal representatives. Therefore, the Tribunal ought to have granted the entire compensation to the claimant directing the same to be for the benefit of the legal representatives.

11. Section 110-B authorises the Tribunal to specify the amount which shall be paid by the owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be. Interest of justice would be best served in this case, if the owner is made liable to pay the entire compensation to the claimant, since it has not challenged its liability by preferring either any appeal or cross-objection. It is left open to the owner to take such action as may be deemed proper against the driver.

12. In conclusion, the claimant is entitled to compensation of Rs. 37,500/- from the Orissa State Road Transport Corporation (Respondent No. 2). The direction as to payment of interest is also modified. The claimant is entitled to interest at 6 per cent per annum from the date of application till the date of payment.

13. In the result, the appeal and the cross-objection are allowed in part. There shall be no order as to costs.

