
(2014) 08 OHC CK 0068
In the Orissa High Court
Case No : M.A.C.A. No. 709/2012

I.C.I.C.I. Lombard General Insurance Company	APPELLANT
Vs	
Sishula Dei	RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 2 ACC 298 : (2014) 2 OLR 1002

Hon'ble Judges : Dr. Akshaya Kumar Rath, J

Bench : Single Bench

Judgement

Dr. Akshaya Kumar Rath, J.—This appeal has been preferred by the Insurance Company against the judgment dated 24.1.2012 passed by the 5th M.A.C.T., Nayagarh in M.A.C. No. 52 of 2009 awarding an amount of Rs. 2,69,000/- as compensation along with simple interest @ 7% per annum from date of application i.e. 7.10.2009 till realization.

2. Respondents 1 and 2 laid an application under Section 166 of the M.V. Act 5th M.A.C.T., Nayagarh, which was registered as M.A.C. No. 52 of 2009 for death of their son Prasanna Ranasingh in a motor vehicle accident. The base of the claimants is that on 23.8.2007 at about 4.00 A.M., Prasanna was waiting at Bijipur Check Gate near Nayagarh for a conveyance in order to transport of his fish for business, at that time a goods carriage vehicle bearing registration No. OR-25-9300 came from Bhubaneswar side at a very high speed. It did not stop though he gave signal. When the vehicle passed away, he looked back for other conveyance, but in the meantime, the offending vehicle came in a reverse motion at a high speed and it's dala dashed against his head, as a result of which, he sustained severe head injury and was shifted to Nayagarh Hospital where he succumbed to injuries.

3. Pursuant to issuance of notice, owner of the vehicle entered appearance and filed written statement denying liability. The appellant-opposite party No. 2 also filed written statement denying its liability.

4. On the basis of the inter se pleadings of the parties, the learned Tribunal framed three issues. To substantiate the case, the claimants had examined one witness and four documents were exhibited on their behalf. Similarly, one witness was examined and ten documents were exhibited on behalf of appellant-opposite party No. 2.

5. On analysis of the evidence on record, the learned Tribunal came to hold that the offending vehicle bearing registration No. OR 25-9300 caused the accident. Having held so, the learned Tribunal awarded a sum of Rs. 2,69,000/- and directed appellant-opposite party No. 2 to pay the same to the claimants along with interest @ 7% per annum from the date of application.

6. Heard learned counsel for the appellant-opposite party No. 2 and learned counsel for the petitioners-respondents 1 and 2.

7. Learned counsel for the appellant submits that the entire case is trailer made. He submits that the alleged vehicle bearing registration No. OR 25-9300 was not involved in the accident. The said vehicle was not seized by the police. He further submits that during investigation, police has arrested the driver of the vehicle bearing Registration No. OR 25-9830 and, accordingly, seized the vehicle. Further more, owner of the vehicle, bearing registration No. OR 25-9300 specifically denied involvement of her vehicle in the accident. He further submits that the vehicle bearing registration No. OR 25-9300 was not Insured with respondent No. 2. He further submits that in view of the same, the claimants have planted the vehicle bearing registration No. OR 25-9300 in the FIR.

8. P.W. 1, father of the deceased has stated in his evidence that the goods carriage (Tata-207) bearing registration No. OR 25-9300 caused the accident. Though he was subjected to extensive cross-examination by the owner as well as insurer, but nothing contrary was elicited from him. Further more, reliance placed by Mr. Khan on the seizure memo and charge-sheet is of no avail, those are not substantive piece of evidence. The contents of the charge-sheet and seizure memo cannot possibly be treated as evidence in the claim proceedings.

9. In view of the same, the judgment dated 24.1.2012 passed by the 5th M.A.C.T., Nayagarh in M.A.C. No. 52 of 2009 does not suffer from any illegality warranting interference of this Court.

10. The MACA is accordingly dismissed.