
(2010) 11 OHC CK 0062

In the Orissa High Court

Case No : MACA. No's. 848 and 1133 of 2009

Kunibala Sahoo and Others

APPELLANT

Vs

Jagamohan Majhi and Another

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2011) 111 CLT 732 : (2011) 1 ILR (Ori) 115 : (2011) 1 OLR 863 : (2011) 3 TAC 247

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Judgement

B.N. Mahapatra, J.—These two appeals arise out of an award dated 09.07.2009 passed by the 2nd M.A.C.T., Cuttack in Misc. Case No. 505 of 1998. MACA No. 848 of 2009 has been filed by the claimant-Appellants for enhancement of the compensation whereas MACA No. 1133 of 2009 has been filed by the insurer-M/s. Oriental Insurance Company Ltd. for grant of right to make recovery of the awarded amount from the owner of the vehicle. Since the facts and law involved in these appeals are one and the same, both the appeals are heard together and disposed of by this common judgment.

2. The facts and circumstances giving rise to the present appeal are that the deceased Surendra Kumar Sahoo died in a vehicular accident which took place on 15.12.1997. The claimants (Appellants in MACA No. 848 of 2009) filed a claim petition before the 2nd M.A.C.T., Cuttack (for short, "Tribunal") claiming compensation of Rs. 2,00,000/-(Rupees two lakhs). After hearing the learned Counsel for the parties, the Tribunal came to the conclusion that the claimants are entitled to compensation of Rs. 2,44,800/-(Rupees two lakhs forty-four thousand eight hundred) excluding funeral expenses and loss of consortium. However, the Tribunal limited the said compensation to Rs. 2,00,000/-on the ground that in the claim petition the claimants had made a claim only to the tune of Rs. 2,00,000/-. Hence, the present appeal.

3. Mr. B. Sahoo, learned Counsel appearing on behalf of the Appellants (in MACA No. 848 of 2009) submits that u/s 168 of the Motor Vehicles Act, 1988, the Tribunal is required to determine the just compensation payable to the claimants irrespective of the amount of compensation claimed by the claimants. It is further submitted that once the Tribunal comes to the conclusion that the amount of just compensation is Rs. 2,44,800/-, it should not have limited the same to Rs. 2,00,000/-. In support of his contention he relied upon the judgment of the apex Court in Nagappa Vs. Gurudayal Singh and Others, and this Court in Mulla Md. Abdul Wahid Vs. Abdul Rahim and Another, .

4. Mr. G.P. Dutta, learned Counsel appearing on behalf of M/s. Oriental Insurance Company Ltd., submits that the Tribunal has rightly limited the amount of compensation to the extent claimed by the claimants. It is further submitted that at the relevant time of accident, the driver of the offending vehicle did not have valid driving licence. Hence, right of recovery of the awarded amount from the owner of the vehicle may be granted to the Insurance Company.

5. Now the issues involved in the present appeals are:

(i) Whether the Tribunal has duty to determine the just compensation irrespective of the amount of compensation claimed by the claimants?

(ii) Whether the Insurance Company is entitled to grant of right of recovery of the amount of compensation from the owner of the vehicle?

6. So far as issue No. (i) is concerned, it is not in dispute that after hearing the learned Counsel for the parties and taking into consideration the oral and documentary evidence, the learned Tribunal came to the conclusion that the claimants are entitled to a compensation of Rs. 2,44,800/-excluding the funeral expenses and compensation for loss of consortium. However, the Tribunal limited the said amount of compensation to Rs. 2,00,000/-on the ground that in the claim petition the claimants had claimed compensation to the tune of Rs. 2,00,000/-. Section 168 of the M.V. Act deals with award of Claims Tribunal. The said section empowers the Claims Tribunal to determine the amount of compensation which appears to it to be just. Therefore, the Tribunal is duty bound to determine the just compensation u/s 168 of the M.V. Act in the given circumstances in a particular case. There is no restriction that the compensation could be awarded only up to the amount claimed by the claimants. This being the intention of the legislature, the determination of just compensation as required u/s 168 of the M.V. Act is nothing to do with the amount of compensation claimed by the claimants. Amount of just compensation determinable u/s 168 of the M.V. Act may be less or more than the amount of compensation claimed by the claimant depending upon the facts and circumstances of a particular case.

7. In the case of Nagappa (Supra), the apex Court held that under the provisions of Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimants. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that

claimant is entitled to get more compensation than the amount claimed, the Tribunal may pass such award. Only embargo is - it should be "Just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. This Court in Mulla Md. Abdul Wahid (Supra), held that the Tribunal has the duty to determine the amount of compensation which appears to it to be just. The expression "just compensation" would obviously mean what is fair, moderate and reasonable and awardable in the proved circumstances of a particular case and the Tribunal has the power to award compensation more than the amount claimed by the claimants.

8. In view of the above, this Court is of the considered view that the Tribunal is not justified in restricting the amount of compensation to Rs. 2,00,000/-after having held that the just compensation in the present case is Rs. 2,44,800/-excluding the funeral expenses and compensation for loss of consortium. From para-8 of the impugned award of the Tribunal, it appears that since the Tribunal wanted to restrict the amount of compensation to the extent claimed by the claimants, he has not awarded any amount of compensation towards funeral expenses and loss of consortium. Since this Court holds that the Tribunal is duty bound to determine the just compensation irrespective of the amount of compensation claimed, the claimants are entitled to compensation towards funeral expenses and loss of consortium which is determined at Rs. 2,000/-and Rs. 5,000/-respectively as provided in the 2nd Schedule of the M.V. Act. Thus, the total amount of compensation which the claimants are entitled to get comes to Rs. 2,51,800/-(Rs. 2,44,800/-+ Rs. 2,000/-+ Rs. 5,000/-)

9. The second issue relates to grant of right of recovery of compensation amount from the owner of the offending vehicle to the Insurance Company. In this regard the categorical finding of the Tribunal in paragraph-9 of the impugned award is that at the relevant time of accident, the driver of the offending vehicle had valid driving licence. Moreover, today Mr. Dutta, learned Counsel for the Insurance Company could not be able to adduce any evidence in support of its contention that the driver of the offending vehicle did not have any driving licence at the relevant time of accident.

10. In view of the above, this Court directs the Respondent No. 2-M/s. Oriental Insurance Company Ltd. in MACA No. 848 of 2009 (Appellant in MACA No. 1133 of 2009) to deposit the above amount of compensation of Rs. 2,51,800/-(rupees two lakhs fifty-one thousand and eight hundred) along with interest " 7% from the date of filing of the claim petition till the date of deposit before the Tribunal within a period of eight weeks from today. On deposit of such amount, the Tribunal shall disburse the same to the claimants in the manner indicated in its impugned award. [[On production of receipt in respect of deposit of the awarded amount as directed above before the Tribunal, the Registrar (Judicial) of this Court shall refund the statutory deposited amount of Rs. 25,000/-along with interest accrued thereon to the Appellant-Oriental Insurance Company Ltd.

11. In the result, MACA No. 848 of 2009 filed by the claimant-Appellants is allowed, and MACA No. 1133 of 2009 filed by Appellant-Insurance Company is dismissed. No order as to costs.

12. MACA No. 848/09 allowed .

13. MACA No. 1133/09 dismissed.