
(1980) 08 OHC CK 0004

In the Orissa High Court

Case No : Misc. Appeal No's. 86 and 171 of 1977

Laxmidbar Mohanty and Another

APPELLANT

Vs

Bhann Dei and Others

RESPONDENT

Date of Decision : 13-08-1980

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1980) ACJ 510

Hon'ble Judges : R.N. Mishra, J

Bench : Single Bench

Advocate : L.D. Rath, for the Appellant; R.C. Patnaik, P.K. Mishra, P. Roy and R. Natia, for the Respondent

Judgement

R.N. Misra, J.—These are appeals under-Section 110-D of the Motor Vehicles Act, Misc. Appeal No. 86 of 1977 is by the owner of the stage carriage vehicle and Misc. Appeal No. 171 of 1977 is by one of the claimants who received injuries. The short facts are these:

On 17.2.75 Sri Bhubananda Ray, then working as Deputy Secretary to the Government of Orissa, was proceeding towards Puri in his car bearing registration No. O.R.P. 957 along with his wife. A few kilometres before Atharnala located at the outskirts of the Puri town the car collided with a public service bus bearing registration No. O.R.P. 3242 coming from Puri side. As a result of the collision, Sri Ray and his wife sustained multiple injuries and one of the passengers travelling in the bus received serious injuries and ultimately succumbed to them. Sri Bhubananda Ray filed a claim for Rs. 21,500/-. His wife, Smt. Prafulla Kumari Ray, filed a separate claim asking for compensation of Rs. 38,000/-. The husband's claim was registered as Misc. Case No. 72 of 1975 while the wife's claim was registered as Misc. Case No. 73 of 1975. The legal representatives of the deceased passenger of the public bus filed a claim for compensation of Rs. 95,000/- and their claim was registered as Misc. Case No. 94 of 1975. The owner of the bus admitted the collision but disputed the

allegation that the bus was being driven rashly and negligently. The Claims Tribunal took up the claims of the husband and the wife at a time, and by a common award determined the compensation payable to Smt. Ray at Rs. 15,000/- . He awarded a compensation of Rs. 6,000/- to the husband with a direction that the amounts shall carry interest at the rate of 6 percent per annum from the date of the claim till payment. Since the amount fixed as compensation came within the limits of the insurer's liability he directed the insurer to bear it.

In the case of the claim by the legal representatives of the deceased passenger, the Tribunal by a separate award quantified the compensation at Rs. 15,000/- and since he was a passenger in a public vehicle, the Tribunal limited the liability of the insurer to Rs. 5,000/- and called upon the owner to suffer the balance.

The husband Sri Ray has not preferred any appeal, and the award so far as he is concerned has become final.

Misc. Appeal No. 171/77 is by the wife asking for higher compensation. Misc. Appeal No. 86/77 is by the owner of the vehicle challenging the compensation awarded by the Tribunal against him.

2. That the stage carriage vehicle was insured with the New India Assurance Company is not disputed. From the facts of the Tribunal rightly came to the conclusion that the bus was being driven in a rash and negligent manner and that contributed to the collision. In fact, the counsel for the insurer has not been able to dispute that finding in view of the fact that evidence is clear. P.W. 1, Dr. Sanatan Rath, Professor of Neuro-Surgery attached to the Medical College Hospital Cuttack, has given the details of the injuries sustained by Smt. Ray. He has stated:

(2) Prafulla Kumari Ray was admitted in the hospital in a semi-conscious state. I noticed lacerated wound extending from the medial end of the orbit 4" on the frontal area close to midline 1" width x 3/4" depth. Brain matter was coming out, and there was profuse bleeding. There was depressed comminuted fracture of the skull bone. The right eye was completely damaged due to bleeding inside the eye, and the right hip was dislocated.

(3) She had cerebro spinal fluid leak through the nose and during hospital stay there were recurrent attacks of severe meningitis. She was operated twice on the brain by me. The lacerated brain was excised out and in the second sitting the missing skull bone was replaced by a synthetic graft. The right eye continues to remain in the damaged stage:. She has no vision by the right eye. She was discharged on 28-2-75. She was re-admitted on 8-3-75 and discharged on 16-5-75. There was third admission on 16-1-77 and discharge on 22-1-77. She still continues to get bacterial meningitis, epileptic seizures and mental disorder. She is still under my treatment. Her right eye has been completely damaged and she will continue to have mental disorder till her end....

There is no challenge to this evidence though the doctor has been cross-

examined. From the evidence it is clear that the survival has been a matter of chance and she has been permanently disabled. The claimant has been examined as P.W. 2. She has stated that she was doing all the work as housewife before the accident and she has become completely unfit. Even for her personal matters now she requires assistance. Sri Ray has been examined as P.W. 3 and there is an independent witness examined as P.W. 4 who saw the actual collision. From their evidence it is clear that the bus was being driven negligently and for the collision the bus was responsible. O.P.W.1 is the driver of the bus. Though he has denied rash and negligent driving and has stated that his bus was being driven at a speed of 10-15 miles per hour, on the evidence, in my opinion, the Tribunal has come to the conclusion rightly that it was the bus and not the car which had ultimately to be blamed for the collision.

3. The real question for consideration is as to what would be the appropriate compensation for the injuries sustained by Smt. Ray. The Tribunal in paragraph 7 of the impugned award failed to deal with the matter in an appropriate way, and without any justification came to determine the compensation at Rs. 15,000/-. From the evidence it appears that for the rest of her life Smt. Ray, who, at the time of the occurrence, was aged 35 years will have to lead a miserable life. Instead of her being the mistress of the house she will have to be looked at after as as dependent. The physical pain and the mental torture she has suffered can indeed not be compensated in terms of money, and taking a sum total view of the matter, instead of getting into the arithmetic of the calculation I think it appropriate to allow the entire claim laid by her. I was of the view that the compensation should be even higher, but now that she has fixed a limit to it I do not think, it would be open to the court to grant compensation beyond the claim. I, therefore, allow the appeal, and in place of the compensation of Rs. 15 000/- granted by the Claims Tribunal, I allow the appeal and grant compensation of Rs. 38 000/- as claimed. The appeal is allowed in full with costs. Hearing fee is assessed at Rs. 250/- to be paid by the insurance company. The entire amount shall carry interest at the rate of 6 percent per annum from the date of claim till payment. The insurer is directed to make the payment by a crossed account payee cheque in the name of the claimant within one month hence.

4. Now coming to the other appeal (Misc. Appeal No 86/77) by the owner of bus, the deceased was a sub-contractor working in Assam area. There is some evidence to show that he was making a good living and was earning between Rs 700/- and Rs. 900/- a month out of which he was contributing about Rs. 3,500/- to the family per year. At the time of death, it was claimed that he was about 35 years of age. His age has been disputed, and the learned Tribunal has determined his age to be about 50. Even conceding that his age to be 50 at the time of death and the claimants had suppressed it, he would have earned at the same rate for about 15 years until he reached the age of 65. The learned Tribunal, keeping the uncertainties of life in view, has reduced the period to 10 years. The deceased's contribution to the family has been fixed at Rs. 150/- per month which seems to be grossly low. The dependents were many and it would

be reasonable to estimate his contribution at Rs. 2,500/-per year. On that basis, for 10 years he would have contributed Rs. 25,000/-. Even slashing one-sixth out of it for lump sum payment, the compensation admissible would have come to Rs. 20,850/- or so. In view of this finding the appeal has to fail and the cross-appeal has to be allowed in part. While I dismiss the appeal, I allow the cross-appeal to the extent that in place of compensation of Rs. 15,000/-, a sum of Rs. 21,000/- in round figures shall be awarded as compensation. Out of it, Rs. 5,000/- shall be the statutory liability of the insurer and the balance amount shall be borne by the owner of the bus. The compensation shall carry interest at 6 per cent per annum from the date of claim till payment.

Misc. Appeal No. 86/77 and the cross-appeal are disposed of without costs.