
(1986) 01 OHC CK 0033
In the Orissa High Court

Lura Kumbhar and Others

APPELLANT

Vs

Malik Ram Vig and Another

RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110D

Citation : (1986) 1 ACC 478

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

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—Widow and son of the victim in an accident are the appellants u/s 110-D of the Motor Vehicles Act, 1939 ("the Act" in short).

2. On 21-5-1979. Mutu Kumbhar, aged about 44 years succumbed to the injuries sustained on account of sudden fall from the moving truck bearing registration No ORS 4325. He was engaged in the truck as a daily labourer. The appellants filed an application u/s 110-A of the Act claiming Rs. 50,000/- as compensation towards the loss of dependency.

3. The owner objected to the claim attributing negligence to the deceased and absolving the driver from negligent driving of the vehicle. The insurer while conceding to the vehicle being insured with it, denied its liability on the ground that the deceased was a gratuitous passenger in the truck.

4. The Tribunal, on consideration of the nature of accident as described by another occupant of the truck and an eye witness to the occurrence, came to the conclusion that the accident was the outcome of negligent driving. This finding has not been seriously assailed before me and is accordingly confirmed.

5. The main question is the quantum of compensation determined by the Tribunal. Normally, quantum of compensation determined by the Tribunal is not to be disturbed in appeal. In a decision of this Court reported in S.K. Devi Vs. Uttam Bhoi and Another, it has been observed thus:

Law is well settled that on appeal the quantum of damages will not be disturbed unless either (i) the Tribunal had applied a wrong principle of law, or misdirected itself, or (ii) the amount awarded either was so inordinately low or was so inordinately high that it must be held as erroneous.

6. It is to be kept in mind that the provisions in the Act do not indicate any guideline for determining the compensation. Vide power has been given to the Tribunal u/s 10-B to determine compensation which is to be just. In such circumstance, there is no scope for any mathematical accuracy. Arithmetic may be a good servant but is definitely a bad master. It also to be remembered that the person made liable to pay the compensation is not penalised and the person getting the compensation is not allowed to make a windfall profit.

7. The Tribunal has accepted the evidence of PW 2, who is also a daily labourer with the deceased that they were getting Rs. 2/- each per trip and were, thus, earning Rs. 10/- to Rs. 12/- per day. In the absence of evidence relating to the distance from which the materials were carried, the Tribunal disbelieved the number of trips made by the truck each day. PW 2 stated that they were making 6 to 7 trips a day. In cross-examination he answered :

The daily trips were not always equal. Some days it was more and some days it was less than five to six trips.

From this evidence it cannot be reasonably concluded that the deceased was making three trips a day. Taking into consideration this evidence, the rate per trip and the daily income, it is reasonable to hold that the deceased was making five trips a day in the average to earn Rs. 10/- per day.

8. The Tribunal has held that the age of the deceased at the time of death was 44. This is a reasonable finding. The determination of the working life of the deceased to be ten years, however, is not reasonable. The evidence of PW 4, the son of the deceased is that the deceased was not an addict to any intoxicant. He also said that his grandfather died at the age of 70. With the increase in the longevity, in the society the working age has also increased. The present social position that with some education in general institutions the descending tendency of manual labour in the Youngman has given rise to greater demand for those who are willing to do the same and thus, the deceased had scope to get himself engaged till he would have attained the age of sixty. Thus, at least fifteen more years working life were available to the deceased.

9. In this case, the loss on account of dependency is bound to be based on some guess work. The deceased was earning Rs. 10/- per day. Evidence is that he was spending one to two rupees towards tea etc. as stated by P.Ws. 2 and 4. Thus, deducting Rs. 2/- towards personal expenses, the amount of Rs. 8/- can be said to be available for contribution to the family. The deceased had his own food and clothing also. Deducting fifty per cent towards the same, the daily dependency comes to Rs. 4/-. Thus, arithmetically the annual dependency comes to Rs. 1440/- approximately and for fifteen years to come he would have contributed at

this rate which comes to Rs. 21,600/-.

10. This Court has been adopting the standard of deducting one-sixth towards uncertainties and lump sum payment. In some cases of course, twenty per cent has been deducted. The Tribunal has accepted the standard deduction of one-sixth. Thus, the total loss of dependency comes to Rs. 18,000/-.

11. The Tribunal has directed Rs. 10,000/- to be paid to both the petitioners-appellants who are mother and son. There is no doubt that the son was aged twenty-five years. A son has moral obligation to maintain his persons. The parents, however, have no such obligation to maintain a married son. Without interfering with the direction that has been given by the Tribunal, I direct the balance Rs. 8,000/- to be paid to the mother only. The amount of Rs. 18,000/- shall carry interest at 6% per annum from the date of application till the date of payment. The insurer is made liable to pay the compensation with interest and costs of the Tribunal. The fee payable on the claim petition shall also be realised from the insurer.

12. In the result the appeal is allowed in part. There shall be no order as to costs.