

(1993) 08 OHC CK 0010
In the Orissa High Court
Case No : M.A. No. 119 of 1987

Mataji Bewa and Others

APPELLANT

Vs

Hemanta Kumar Jena and Another

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

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

Citation : (1994) ACJ 1303

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : S. Mohanty, for the Appellant; P. Roy, for the Respondent

Judgement

G.B. Patnaik, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") against an award of the Second Motor Accidents Claims Tribunal, Cuttack, in Miscellaneous Case No. 178 of 1984.

2. The claimants had filed the application u/s 110-A of the Act claiming compensation to the tune of Rs. 1,30,000/-alleging that when the deceased was going on the road on the National Highway No. 5 on 2.2.1984, at 5.00 a.m., the offending truck bearing registration No. CSC 5480 knocked him down from his back side as a result of which the deceased sustained fatal injury. He was immediately removed to the S.C.B. Medical College Hospital, Cuttack, where he succumbed to the injury on the very same day at 6.00 p.m. It was averred in the claim petition that the deceased was earning Rs. 1,500/- per month and was contributing Rs. 1,000/- for the maintenance of the family. The claimants are the widow, the minor daughters and the widowed mother of the deceased.

3. The owner did not contest the proceeding, but the insurer contested the proceeding denying the allegations made in the claim petition. Even the insurer denied with regard to the insurance of the offending truck. It had also taken a plea that the deceased was a passenger in the goods vehicle for hire and having died on account of the accident, the insurer is not liable to pay any compensation.

4. The Tribunal came to hold that the deceased was a passenger in the truck which was involved in the accident. The said truck was being driven rashly and negligently by the driver. The deceased as a passenger sustained the injury on account of the accident and ultimately succumbed to the injury. On the quantum of compensation, the Tribunal found that a sum of Rs. 36,000/- would be the just compensation. But in view of the finding that the deceased was travelling in the truck as a passenger when the accident occurred, the Tribunal held that the insurer was not liable to pay any compensation and accordingly allowed the application ex parte against the owner and dismissed the same as against the insurer. It is against this award, the present appeal has been preferred both on the ground of insufficient compensation having been awarded and on the ground of exonerating the insurer from liability.

5. Mr. S. Mohanty appearing for the appellants contends that the Claims Tribunal committed gross error of law in recording a finding that the deceased was travelling on the offending truck as a passenger solely relying upon the charge-sheet, Exh. 1, that had been filed in the criminal case and in not considering the oral evidence adduced by the claimants. Mr. Mohanty further urges that the claimants having filed an application to issue notice to the insurer to give discovery of the insurance policy on 18.6.1986 and the insurer having taken several adjournments to produce the policy and having ultimately failed to produce the same, it would be legitimate for the court to draw adverse inference and, therefore, it is not open for the insurer to take a stand that the vehicle had not been insured. Mr. Mohanty also urges that the plea of the insurer to the effect that the vehicle had not been insured was taken in a written statement that was filed on 14.8.1986 when claimants' application to allow them to further examine witnesses was allowed. Therefore, that stand in the written statement cannot at all be taken into consideration as the insurer had not taken such a plea in the written statement filed earlier. So far as the quantum of compensation awarded is concerned, Mr. S. Mohanty contends that the amount in question is grossly low.

Mr. Roy for the insurer, on the other hand, contends that in view of the stand taken in the written statement that the vehicle has not been insured and in the absence of any finding to that effect, no liability can be fastened on the insurer.

6. In view of the rival submissions of the parties, the first question that arises for consideration is whether the Tribunal was justified in holding that the deceased was travelling on the offending truck as a passenger and succumbed to the injury on account of the accident of the truck in question. The sole basis for the Tribunal to come to the aforesaid conclusion is the contents of a charge-sheet filed in the criminal case. The contents of a charge-sheet cannot possibly be treated as an evidence in the claim proceedings. The Tribunal obviously committed gross error of law in relying upon the said charge-sheet to come to the conclusion that the deceased was travelling on the truck as a passenger. On the other hand, the positive evidence of the claimants that the deceased was a

pedestrian and the truck came and knocked him down has not been impeached in any manner by way of cross-examination. There was no justification on the part of the Tribunal to ignore that evidence of the claimants. In the aforesaid premises, the finding of the Tribunal that the deceased was travelling on the truck cannot be sustained and the said finding is accordingly set aside. On the evidence on record, it must be held that the deceased was a pedestrian and while going on the road, the offending truck came and knocked him down.

7. The next question that arises for consideration is whether the vehicle in question had been insured with the insurer so as to fasten the liability on the insurer. The records of the case reveal that the written statement taking the stand that the vehicle had not been insured with opposite party No. 2, insurer, was filed on 14.8.1986 much after the evidence in the case was closed and before the filing of the award. It is not clear as to whether that written statement was ultimately allowed by the Tribunal or was merely kept on record. Be that as it may, it goes to the root of the matter, inasmuch as if the vehicle had not been insured with the insurer on the relevant date, then the insurer cannot be held liable. There is some force in the submission of Mr. Mohanty for the appellants that even though on the application filed by the claimants calling upon the insurer to give discovery of the policy in question and pursuant to notice issued by the Tribunal the insurer took several adjournments, and yet the policy having not been produced, the Tribunal was entitled to draw adverse inference on the same. But that aspect of the matter has not been examined by the Tribunal at all since on the finding that the deceased was travelling as a passenger on the truck, the insurer's liability ceases. But in view of the reversal of the said finding by me, it would now be necessary to examine whether, in fact, the vehicle had been insured with the insurer, opposite party No. 2. Since the matter has not been considered from that angle, it would be just and proper to remit the matter to the Tribunal by giving an opportunity to the parties to lead evidence afresh for enabling the Tribunal to come to a conclusion, one way or the other.

8. Coming to the question of quantum of compensation, assessed by the Tribunal, in view of the evidence of the widow of the deceased, PW 3, to the effect that the deceased was contributing at the rate of Rs. 60/- per day to the family, there was no justification for the Tribunal to assess the income of the deceased at Rs. 300/-per month. Even if the deceased would be taken to be a daily wage earner, his income would be Rs. 800/- to Rs. 900/- per month. Therefore, the finding that the deceased was earning Rs. 300/- per month is on the face of it unsustainable and, therefore, the ultimate determination of compensation is grossly low and cannot be sustained. But it is not necessary for me to determine the quantum of compensation since the matter is being remitted back to the Tribunal for reconsideration.

9. In the net result, therefore, the impugned award of the Tribunal is set aside and the matter is remitted back to the Tribunal for re-determination by giving opportunity of hearing to the parties as well as allowing the parties to lead

evidence. The Tribunal will do well to dispose of the matter within a period of three months from the date of receipt of the order.

The miscellaneous appeal is accordingly-disposed of. There will, however, be no order as to costs.