

(1985) 03 OHC CK 0034

In the Orissa High Court

Case No : Misc. Appeal No's. 131 and 184 of 1983

Motijhara Devi and Others

APPELLANT

Vs

The Orissa Transport Corporation Limited

RESPONDENT

Date of Decision : 01-03-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1986) 2 ACC 136 : (1986) ACJ 99 : AIR 1985 Ori 147

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

Bench : Single Bench

Advocate : S.P. Mishra, D. Das, S.K. Choudhury, S. Latiff and Mira Ghose, for the Appellant; M. Jain, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Misra, J.—These two appeals which have been heard analogously arise out of the judgment dt. 18-1-83 passed by the learned Third Motor Accident Claims Tribunal, Puri in Misc. Case No. 5 of 1980 awarding a sum of Rs. 72,000/- as compensation. Misc. Appeal No. 131 of 1983 has been filed by the widow and her six children who have been awarded the compensation and Misc. Appeal No. 184 of 1983 has been filed by the Managing Director, Orissa Road Transport Co. Ltd., Berhampur against whom the award has been made. This judgment shall govern both the appeals. For the sake of convenience the widow and her children shall be called "the petitioners" and the Managing Director of the Company shall be referred to as the "opposite party."

2. The case of the petitioners may Be briefly stated. The late Tarkeswar Sharma used to maintain himself and his family, the petitioners, by vending tea on a bicycle from village to village. His monthly income was Rs. 1,000/- and every month he was contributing Rs. 800/- to the family. On 21-8-79 Tarkeswar was going on his bicycle on the left side of the Puri-Bhubaneswar road when around 2 P.M. the bus bearing registration No. ORP 6696, belonging to the opposite party, came from behind at high speed without sounding the motor-horn and ran over

Tarkeswar as a result of which he died at the spot. The petitioners thereafter applied to the learned Motor Accident Claims Tribunal for compensation of Rs. 1,50,000/-.

3. The case of the opposite party is that at the time of the accident the driver was driving the bus at slow speed when at the Sisupalgarh Junction a Gram-Sevak came from the right side of the road and hit the bus on its backside whereupon the driver swerved the bus to the left, but finding a ditch pulled it back to the right when Tarkeswar panicked and came in front of the bus thereby causing the accident. The opposite party has denied that Tarkeswar's monthly income was Rs. 1,000/- or that his contribution to the family was Rs. 800/- per month.

4. The learned Tribunal who tried the case found that the accident was caused due to the rash and negligent driving of the bus and that the opposite party was therefore liable to pay compensation to the petitioners. On assessment of the income of Tarkeswar and his contribution to the family, the learned Tribunal further found that the petitioners were entitled to Rs. 72,000/- as compensation. The Misc. Case was accordingly allowed with costs of Rs. 100/-. Interest has also been directed to be paid on the amount of the award as per directions contained in the Judgement. The petitioners have assailed the award in this appeal on the ground that the amount of compensation fixed by the Tribunal is rather low and that they should have been awarded Rs. 1,50,000/- claimed by them as compensation. The opposite party has challenged the award on the ground that the driver of the bus not being guilty of rash and negligent driving, the petitioners should not have been awarded any compensation.

5. At the hearing Mr. M. Jain, learned counsel appearing for the petitioners, and Miss Mira Ghose, "learned counsel appearing for the opposite party, put forward their respective cases. Mr. Jain argued that the learned Tribunal failed to take into account the evidence as regards the monthly income of the deceased and his monthly contribution to the family. It is also argued that the learned Tribunal went wrong in assessing the age of the deceased as 35 years. Learned counsel appearing for the opposite party, on the other hand, submitted that the age of the deceased as found by the learned Tribunal is proper as it is supported by the description of the age of the deceased contained in the post-mortem report. On going through the records I find that the learned Tribunal has determined the age of the deceased on his own estimation and has relied upon the age of the deceased given in the post-mortem report. On consideration I agree with the finding of the learned Tribunal on this point.

6. Learned counsel appearing for the opposite party urged that the learned Tribunal was not right in inferring that the driver of the bus was rash and negligent because there was no skid-mark at the spot of the accident. It is true that mere absence of skid-mark at the spot cannot by itself lead to a definite conclusion that the vehicle was being driven negligently or at high speed, because if brakes are applied gently while the bus is at slow speed, no skid-mark

may be left on the road. However, in the present case apart from the absence of skid-mark, there is the positive evidence of P. Ws. 1 and 5 that the driver of the bus was driving his vehicle at high speed and did not sound its motor-horn; first he dashed the bus against a Gram-Sevak who was on his bicycle and killed him at the spot and then turned left, hit the deceased and also killed him at the spot. The evidence of P. Ws. 1 and 5 is natural and trustworthy. There is no reason why their evidence should not be accepted. The oral evidence of these witnesses along with the report of the Motor-Vehicles Inspector that the bus was in good mechanical order does establish that the rash and negligent driving of the bus was the cause of the accident. The evidence of the driver, conductor and a bicycle repairer does not inspire confidence. It has not been accepted by the learned Tribunal and I do not find any reason to take a different view. Accordingly, I agree with the finding of the learned Tribunal that the accident was caused on account of the rash and negligent driving of the bus.

6A. As regards the income of the deceased, the learned Tribunal has carefully examined the evidence on this point and held that the contribution of the deceased to his family was Rs. 250/- per month. I accept this estimation as just and fair, the amount of compensation fixed by the learned Tribunal is reasonable and deductions have been properly made.

7. In the result both the appeals are rejected. The judgment of the learned Tribunal is confirmed. Parties will bear their own costs of this court.