

(1989) 06 OHC CK 0009

In the Orissa High Court

National Insurance Co. Ltd.

APPELLANT

Vs

Krushna Chandra Das and Others

RESPONDENT

Date of Decision : 23-06-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110B, 95(2)(b)(i)

Citation : (1989) 2 ACC 507

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

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—Insurer is the appellant u/s 110 B. of the Motor Vehicles Act (hereinafter referred to as "the Act").

2. On 20th March 1986 at about 8 A.M. deceased was proceeding towards Garadapur on Salipur-Pattamundai road in a bi-cycle. Between Kalinga and Kulia, a bus bearing registration No. ORU 8115, in which passengers are carried, dashed against the deceased from behind causing severe injuries. He was removed to the hospital at Salipur and then to S.C.B. Medical College Hospital at Cuttack for treatment where he succumbed to the injuries on 21-3-1986. Alleging that the death was on account of negligent driving of the vehicle, widow, three minor children and parents filed an application u/s 110-A of the Act claiming compensation of Rs. 1,50,000/-. Owner and the Insurer both contested the claim petition. Tribunal on assessment of material held that the accident in which deceased sustained fatal injuries, was on account of negligent driving of the motor vehicle. Tribunal determining just compensation at Rs. 90,000/- on the finding that loss of annual dependency of the claimant was Rs. 6,000/-. Tribunal adopted the multiple of 15 times to determine the just compensation. Owner has not preferred any appeal. While Insurer assailed its liability for Rs. 90,000/-, claimants have filed a cross-objection claiming compensation of Rs. 1,50,000/-.

3. Taking up the cross-objection of the claimants first, it shall be seen that the deceased was an employee whose salary was Rs. 1,078/- per month. In the absence of acceptable evidence of take home salary, assessment of his monthly

contribution at Rs. 500/- to the claimants cannot be discarded as unreasonable. Application of the principle of multiple is a known method of determining just compensation. Learned Counsel for the claimants has not been able to satisfy me why such a principle ought not to be adopted. Accordingly, I am not inclined to interfere with the determination of the amount of just compensation. Thus, there is no merit in the cross-objection.

4. Learned Counsel for the Insurer appellant submitted that liability of the Insurer in this case ought to have been confined to Rs. 50,000/- in all as provided in Section 95(2)(b)(i) of the Act. It reads as follows:

95(2)(b)(i): Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely

(a) xx xx xx (b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment

(i) In respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all.

Learned Counsel for the parties submitted that there is no decision interpreting this provision with regard to liability of the insurer in respect of accident causing injuries to pedestrians who are not passengers in the vehicle. Accordingly, I am required to examine this question.

5. There can be no dispute that Section 95 deals with the statutory liability of insurer. Insured and Insurer cannot defeat this provision by any term in the contract between them. There cannot also be dispute that the "limit provided in Section 95 can be exceeded by contract which would not be unlawful. If this is kept in mind, the provision can be interpreted to be a benevolent provision to give benefit to the person suffering on account of the accident. Section 95(2)(b) deals with vehicles in which passengers are carried for hire or reward or by reason of or in pursuance a contract of employment. Whether a person is a person carried for hire or reward or by reason of or in pursuance of a contract of employment, he is an occupant in the vehicle. From out of them in Clause (i) passengers carried for hire or reward are excluded and in respect of other categories of persons moving in the vehicle compensation as quantified is fixed. Language of Sub-section (2) being one for limiting the broad liability of insurers in Sub section (1) is to be rigidly construed. Accordingly, the benevolent provision in Section 95 to facilitate the claimants to get their compensation conveniently from the Insurer is to be construed in a manner so that large number of claimants get the benefit excepting those in respect of whom the liability of the insurer is clearly limited by the legislature. Pedestrian is not such a person in respect of whom liability has been limited u/s 95(2)(b)(i) of the Act. Therefore, I am inclined to hold that claimants in respect of an accident caused by a vehicle in which passengers carried are entitled to get the compensation from the insurer without being affected by the limits provided in Section 95(2Xb)

(i).

6. Learned Counsel for the appellant submitted that Tribunal has misread the terms of the policy to conclude that liability of the insurer is unlimited. Mr. R.N. Mohanty, learned Counsel for claimants-respondents submitted that there is an entry in Ext. A.H P.A. with unlimited T.P., which indicates that, the liability of the insurer is unlimited. If I would not have held that Section 95(2)(b)(i) does not limit the liability of the insurer I would have remitted back the matter to give opportunity to the insurer to explain the term by examining witnesses subject to payment of costs to the, claimants by the insurer, This would however, become academic since I have held earlier that the liability of the insurer is unlimited so far as the claimants in this case. Accordingly, I need not answer this point, I am however, inclined to observe that insurer in future should give clear evidence of the terms which are ambiguous in view of the nature of expression in the policy for proper interpretation by the Tribunal.

7. Claimants who are parents, widow and minor children did not get any amount till 7-12-1988 when it was directed that Rs. 50,000/- is to be deposited with the Registrar of this Court within a month. After such deposit has been made, on 8-5-1989, a direction has been given that on the respondents opening two Bank Accounts on or before the 20th June, 1989 when the two pass books were to be submitted to this Court. Registrar shall deposit Rs. 45,000/- in the name of widow in one account, which would be for her and for her three children and Rs. 5,000/- in the other account in the name of the parents. On 20 6-1989 Pass Books have been filed. But deposits have not yet been made. Since I have disposed of the appeal, the interims order dated 8-5-1989 need not work out and the Registrar shall lead the amount deposited to the Tribunal.

8. Tribunal directed that in case of non-payment of the amount awarded be with 6% per annum interest. With interest the amount shall carry interest at 9% per annum. Since Rs. 50,000/- was not deposited within the time stipulated, it shall carry interest at 9% per annum from the date of application till the date of deposit in this Court. I may make it clear that an account payee cheque was given on 7-1-1989. Handing over an account payee cheque does not amount to deposit of the amount. Accordingly, interest shall be paid by the insurer till the date the cheque was so cashed by the Registrar. For the balance amount of Rs. 40,000/- interest at the rate of 9 per cent per annum from the date of application shall be paid if deposit with interest is made to the Tribunal within two months failing which the said amount shall carry interest at 12 per cent per annum from the date of application till the date of deposit.

9. Tribunal shall deposit seventy five per cent of the total amount in a fixed deposit for seven years in the name of the widow and the three minor children jointly in a Bank with direction that the Bank authorities shall not permit pledge, withdrawal or offer of the deposit as security before expiry of the period. Out of the balance 25%, Rs. 10,000/- shall be paid to the claimants in cash and the balance shall be deposited in the account opened in the name of the parents for

the benefit of all the claimants. Pass Book in name of the widow be returned and the Pass Book in name of the parents be sent to the Tribunal.

10. In the result, both appeal and cross-appeal are dismissed subject to the aforesaid modification. No costs.