
(2022) 08 OHC CK 0142

In the Orissa High Court

Case No : MACA Nos. 905, 907, 908, 909, 910, 723, 722, 724, 725, 726 Of 2018

National Insurance Company Ltd

APPELLANT

Vs

Gobardhan Chandra Pattanayak And Others

RESPONDENT

Date of Decision : 22-08-2022

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 337, 338

Citation : (2022) 08 OHC CK 0142

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : Gautam Mishra, K. Panigrahi

Final Decision : Dismissed

Judgement

B.P. Routray, J

1. All the appeals are arising out of the common judgment/award dated 9th April, 2018 passed by learned 1st M.A.C.T., Cuttack in five claim applications.

2. MACA Nos.905, 907, 908, 909 and 910 of 2018 have been preferred by the insurer and rest of the appeals are preferred by the respective claimants. The chart below is prepared showing those appeals with corresponding claim applications and awards passed therein.

Sl.

No.

MACA No.

Claim Case Number before the Tribunal

Amount awarded

A

722/2018

(By the Claimant)

MAC No.101/2011

Regarding Death of Sailendra Pattanayak

Rs.1,51,66,960.00

905/2018

(By the Insurer)

B

723/2018

(By the Claimant)

MAC No.102/2011

Regarding Death of Vijaya@ Bijaya Nayak@ Bijaya Pattanayak

Rs.14,14,000.00

907/2018

(By the Insurer)

C

724/2018

(By the Claimant)

MAC No.103/2011

Regarding Death of Sanjukta Mohanty

Rs.4,90,000.00

908/2018

(By the Insurer)

D

725/2018

(By the Claimant)

MAC No.104/2011

Regarding Injury to Sharada Charan Mohanty

Rs.2,00,000.00

909/2018

(By the Insurer)

E

726/2018

(By the Claimant)

MAC No.105/2011

Regarding Injury to Praveen Mohanty

Rs.10,000.00

910/2018

(By the Insurer)

3. The common case of the claimants is that on 2.11.2010 three deceased persons along with the injured were coming in a Tavera vehicle bearing Registration No.OR-02-BF-3691 from Kolkata to Bhubaneswar. At around 4.30 a.m., said Tavera vehicle dashed against the truck bearing Registration No.MH-31-CB-1359 (hereinafter referred as "offending truck") from behind. As a result of this, three persons died and two persons were injured. It is submitted by the claimants that when the Tavera was coming near Bonth Chhaka, Bhadrak, the offending truck overtook it with high speed and applied sudden brake on the road for which the driver of the Tavera dashed behind it losing his control. Bhadrak Town Police Case No.197 dated 2.11.2010 was registered on the complaint lodged by Sharada Charan Mohanty, who is the injured-claimant in MAC No.104/2011. Upon completion of investigation, the Police submitted charge-sheet against the driver of the offending truck for alleged commission of offences under Sections 279/337/338/304-A of the Indian Penal Code.

4. The claimants examined 11 witnesses on their part and marked 52 documents as Ext.1 to 52. The insurer, i.e. M/s.National Insurance Co. Ltd. examined two witnesses from their side and filed 10 documents which are marked as Ext.A to K.

5. The learned Tribunal upon adjudication held entire negligence on the driver of the offending truck for cause of the accident and accordingly granted compensation of respective amounts in each case as stated above.

6. The common challenge of the Insurance Company in all the appeals is regarding attribution of contributory negligence on the part of the driver of the Tavera vehicle. It is contended that since the Tavera dashed behind the truck, major part of negligence should be on the driver of the Tavera vehicle. But no claim has been raised against the owner of the Tavera vehicle and even he was not made a party in the claim applications. It is further submitted that the prayer to add the owner of the Tavera vehicle as a party to the claim applications was rejected by the learned Tribunal and not only this, but the prayer of the insurer to examine the Police Investigating Officer was also rejected by the learned Tribunal. It is therefore submitted that in such scenario, the scope of proving contributory negligence on the part of the driver of the Tavera vehicle was closed.

7. In addition to the above, the insurer has also questioned the quantum of compensation in each case which will be dealt subsequently at the relevant paragraphs.

8. The respective claimants have come up in appeal praying for enhancement of the quantum of compensation in each case on separate grounds, which will be dealt in subsequent paragraphs.

9. As stated above, the contributory negligence on the part of the Tavera vehicle is the most contentious issue raised by the insurer. In this regard, it is seen from the discussions of the learned Tribunal that based on the evidence of Sharada Charan Mohanty (P.W.2) – the injured eye-witness and the FIR as well as the charge-sheet submitted by the Police, the learned Tribunal has fixed the negligence on the part of the driver of the offending truck. Admittedly P.W.2 is the informant in Police case and the recitals of the FIR under Ext.1 as well as the charge-sheet under Ext.2 are found in support of the ocular evidence adduced by P.W.2 and P.W.9, the eye-witnesses of the accident. OPW-1 and 2, who are the investigator and administrative officer of the Insurance Company, are not the eye-witnesses. The basis of contention of the insurer to contribute negligence on the part of the driver of the Tavera vehicle is the inquest reports prepared by the Police under Ext.E, F and G. In those inquest reports, this P.W.2 has endorsed at column 9 that the accident took place due to un-mindfulness of the driver of the Tavera vehicle. This endorsement of P.W.2 made in the inquest report is the basis of reliance of the insurer to contribute negligence on the part of the driver of the Tavera vehicle.

10. Before looking to the inquest reports, it is important to peruse the evidence of P.W.2, P.W.9 and the contents of the FIR as well as the charge-sheet. As per the evidence of P.W.2 & 9, the offending truck overtook the Tavera vehicle and suddenly stopped by swerving to its left. In the FIR which was lodged immediately after the accident, P.W.2 has stated that the accident took place because of the negligent driving of the driver of the truck which stops suddenly on the road. The Police in course of investigation examined different other witnesses and submitted the charge-sheet against the driver of the truck alone. As such the statement mentioned by P.W.2 in the inquest reports does not have any impact unless such endorsement made by the P.W.2 is confronted to him in the cross-examination. Now looking to the cross-examination of P.W.2, it is found that no such confrontation has been made by the insurer to him. No question with regard to such endorsement made by him in the inquest report was put to him except one mere denial suggestion that the accident occurred due to the negligence of the driver of the Tavera vehicle. Rather said P.W.2 has confirmed his stand that the accident took place due to negligence on the part of the driver of the truck as he applied sudden brake just in front of the Tavera vehicle. Therefore, the evidence of P.W.2 which is clear and cogent to suggest negligence entirely on the driver of the offending truck is found supported from the contents of the FIR as well as charge-sheet. Such evidence of P.W.2 is also corroborated

by the evidence of P.W.9, another injured-claimant and eye-witness to the accident. Against such concrete evidence adduced from the side of the claimant, the mere endorsement of P.W.2 made in the inquest report has no impact and the probability of negligent driving on the part of the driver of the offending truck is preponderant. Therefore, upon scrutiny of the entire evidence brought on record, the sole negligence concluded on the part of the driver of the truck by the learned Tribunal is found supported with established principles of evidence and hence confirmed. The contention of the insurer against the same is thus rejected.

11. Now coming to the quantum of compensation granted in each cases, first coming in respect of MAC No.101/2011, the deceased there was aged about 39 years 8 months 19 days and he was serving as Zonal Manager in Reliance Life Insurance Company Limited at Kolkata and getting monthly remuneration of Rs.2,10,837/- that includes basic pay of Rs.67,400/- and HRA of Rs.40,440/-. The learned Tribunal while determining the income of the deceased took the basic pay and HRA only for calculation and after deducting 20% towards income tax and required amount for professional tax, that comes to Rs.83,872/-. Adding 50% thereto towards future prospects and applying multiplier '15' with deduction of 1/3rd towards personal expenses, the total loss of dependency is determined to Rs.1,50,96,960/-.

12. Here it is submitted by the insurer that addition of 50% towards future prospects is not permissible since the deceased was an employee of a private company. At the same time, the claimants contend that non-counting of other allowances from the salary by the learned Tribunal without any reason is violative of the settled principles.

13. First of all, the contention of the insurer about impressibility of addition of 50% towards future prospects has no merit for consideration in view of the principles settled in the case of National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680. A detailed discussion on the same is not required. So far as the claim for addition of other allowances towards income as submitted by the claimants, the same is also found without merit for the reason that other allowances which are not counted by the learned Tribunal are only incentives and perks. The learned Tribunal for this purpose has counted the basic pay along with the HRA. Therefore, no illegality is seen in determination of the monthly income of the deceased at such rate.

14. Next coming to the respective appeals arising out of MAC No.102/2011, here the deceased was aged about 38 years 6 months 26 days and the learned Tribunal took her income at Rs.8,000/- per month notionally against the claim of the applicants of Rs.15,000/-. The learned Tribunal in absence of any material proved in support of such contention has rightly approached to fix such notional income of the deceased and further added 40% towards future prospects thereto. The contention of the insurer not to add future prospects to the income of the deceased whose notional income has been counted, is found without merit

in view of the law settled in the case of Kirti and another vs. Oriental Insurance Company Limited, (2021) 2 SCC 166. Similarly the claim of the applicants to enhance the same to Rs.15,000/- is also rejected when they have admittedly failed to bring any such proof regarding specific income of the deceased on record.

15. In respect of MAC Nos.101/2011 and 102/2011, the further contention raised by the insurer is that, claimant no.1 being the father of Sailendra (deceased in MAC No.101/2011) and father-in-law of the deceased Vijaya (deceased in MAC No.102/2011) is not their dependant since he being a retired Government servant is getting pension. But the insurer is forgetting the fact that along with claimant no.1, the minor daughter of both the deceased is also claimant no.2 whose dependency certainly cannot be questioned. However, since the learned Tribunal has directed for payment of major portion of the compensation to the minor daughter of the deceased persons, who is staying with claimant no.1, no point is made out to disturb any such direction of the learned Tribunal made in favour of claimant no.1. Otherwise also claimant no.1 cannot be totally discarded out as a dependant of the deceased persons.

16. Next coming to MAC No.103/2011, the deceased there was aged about 38 years within the age group of 41-45 years and the learned Tribunal assessed her monthly income at Rs.3,000/- notionally against the claim of the applicants to Rs.7,000/- per month. The learned Tribunal further added 25% towards future prospects. No flaw is seen in such approach of the learned Tribunal and it has rightly accepted the deceased as non-earning person and fixed her notional income in terms of the decision rendered in the case of Laxmi Devi and others vs. Mohammad Tabbar and another, (2008) 12 SCC 165. The respective contentions of the claimants as well as the insurer against determination of such compensation by the learned Tribunal are rejected without any supporting material.

17. Similarly in respect of other two cases, i.e. MAC Nos.104 & 105 of 2011 which are injury cases, it is contended on behalf of the insurer that the injured Sharada Charan Mohanty being an employee of Orissa University of Agricultural Technology has reimbursed the medical expenses and has not sustained any loss of earning capacity. It is seen from the impugned judgment that the learned Tribunal has not granted any compensation for loss of earning or earning capacity. The Tribunal has granted consolidated sum of Rs.2,00,000/- keeping in view the nature of injuries and the period of treatment. Admittedly no material has been brought on record to reveal anything that the injured-claimant has reimbursed the medical expenses. Since the Tribunal has granted consolidated compensation of Rs.2,00,000/-, no merit is found in the contention raised by either parties to disturb the same which in opinion of this Court is reasonable keeping in view the nature of injuries sustained and treatment undertaken.

18. Considering the amount granted by the Tribunal in MAC No.105/2011 and in absence of any material with regard to nature of injuries sustained by him, this

Court finds no reason to interfere with the same.

19. In view of the discussions made above, all the appeals are dismissed being without merit.

20. The insurer is directed to deposit the respective amounts granted by the Tribunal in each case including interest within a period of two months from today, which shall be disbursed in favour of the respective claimants in terms of the direction of the learned Tribunal contained in the impugned judgment. Subject to deposit of the amounts within a period of two months, the payment of any penal interest as directed by the Tribunal is waived.

21. On deposit of the award amount before the learned Tribunal and filing of a receipt evidencing the deposit with refund applications before this Court, the statutory deposit made by the insurer in their appeals before this Court with accrued interest thereon shall be refunded to the Insurance Company.

.....