

(2005) 10 OHC CK 0038
In the Orissa High Court
Case No : M.A.C.A. No's. 740 and 889 of 2003

National Insurance Company Ltd.

APPELLANT

Vs

Kanduri Sethy and Others

RESPONDENT

Date of Decision : 27-10-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 16

Citation : (2006) 2 ACC 742 : (2006) 1 OLR 540

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—Heard.

2. Judgment dated 13.8.2003 passed by the 2nd Addl. District Judge-cum-Motor Accident Claims Tribunal, Cuttack in M.V. Misc. Case No. 644 of 1997 is assailed by the National Insurance Company Limited in MACA No. 740 of 2003. The same Judgment is also assailed by the claimant-petitioners in MACA No. 889 of 2003. The facts and points in both the cases being same they were taken up together for hearing.

3. In a motor vehicle-accident which occurred on 1.6.1997 due to collision between a Trekker bearing registration No. OR-05-C-8257 and a Truck bearing registration No. ORL-1259 one Mohan Sethy who was working as a Manager in Rebika Hotel and was aged about 26 years sustained grievous injuries and ultimately succumbed. It is alleged that he was earning a sum of Rs. 3500.00 per month. The widow and old parents, minor children and other legal heirs filed an application u/s 166 of the Motor Vehicles Act claiming a compensation of Rs. 10,000,00.00.

4. On receiving notice the owner of the truck appeared and filed a written statement and took the plea that the accident took place not due to negligence of the driver of the Truck but due to rash and negligent driving of the driver of the Trekker. It is further stated that the Truck was duly insured with the

appellant-Insurance Company. The appellant who was opposite party No. 3 before the Tribunal in its written statement vaguely denied the averments made in the claim petition and took the stand that the insurance policy was not valid on the date of accident and that the driver of the offending vehicle was not possessing a valid driving licence. M/s. United India Insurance Company Limited, opposite party No. 4 before the Tribunal, the insurer of the Trekker, also took the specific plea that there being no negligence on the part of the driver of the Trekker in causing the accident the said insurer is not liable to pay any compensation.

5. In order to substantiate their case claimant-petitioners got examined four witnesses and exhibited seven documents. Opposite party No. 3 got examined one witness and exhibited five documents. The Tribunal after threadbare discussion of the evidence, both oral and documentary and relying upon the deposition of the eye witnesses came to the conclusion that the accident occurred due to negligent driving of the driver of the truck and that the death of the deceased Mohan took place because of that. The Tribunal relying upon the certificate granted by the School where the deceased was prosecuting his study held that he was 32 years at the time of his death. Further relying upon the evidence of P.Ws. 1 to 3 the Tribunal held that the income of the deceased was Rs. 50/- per day. Basing on such conclusion the Tribunal awarded a sum of Rs. 2,13,500.00 as compensation with interest at the rate of 6% per annum with effect from 7.8.1997 till payment.

6. Mr. Mohapatra, learned Counsel appearing for the appellant-National Insurance Company Ltd., assailed the findings of the Tribunal mainly on the ground that the Tribunal committed an error in not holding that the accident took place due to negligence of both the vehicles and in not apportioning the compensation accordingly. It was further submitted that the evidence as to the identity and income of the deceased was discrepant. Further according to Mr. Mohapatra, the Tribunal acted illegally in applying "17" multiplier and that the compensation awarded is excessive.

7. Mr. Mohanty, learned Counsel appearing for the United India Insurance Company Limited, the insurer of the trekker, forcefully repudiated the arguments advanced by Mr. Mohapatra. Referring to the evidence of P.W. 5 who was eye witness of the occurrence and the police papers Mr. Mohanty submitted that the Tribunal has rightly arrived at the conclusion that the accident took place due to rash and negligent driving of the driver of the truck.

8. Mr. D.K. Mohapatra, learned Counsel appearing for the appellants in MACA No. 889 of 2005 who were petitioners before the Tribunal, on the other hand, submitted that the Tribunal acted illegally and with material irregularity in awarding a paltry amount of Rs. 2,13,500.00 while in fact the petitioner-appellants were entitled to at least Rs. 10 lakhs. In support of such contention Mr. D.K. Mohapatra submitted that the material documents like Ext. 6, the salary certificate issued by the employer, clearly reveal that the monthly income of the

deceased was Rs. 3500/- which has been ignored by the Tribunal. It is also submitted that the Tribunal acted illegally in applying "17" multiplier and as the age of the deceased was 25 years, "18" multiplier ought to have been the correct multiplier. Referring to various earlier decisions of this Court Mr. D.K. Mohapatra strenuously submitted that as the accident took place in the year 1997 the Tribunal acted illegally in awarding interest at the rate of 6% per annum as the rate of interest prevalent at the relevant time was much higher.

9. I have heard learned Counsel for the parties at length. I have also gone through the evidence, both oral and documentary, and the impugned judgment. The School Leaving Certificate and other materials reveal that the deceased was aged 25 years on the date of accident. There is of course some discrepancy with regard to monthly income of the deceased. Be that as it may, the evidence of eye witnesses vis-a-vis police papers lead to an irresistible conclusion that the accident took place due to rash and negligent driving of the driver of the truck and thus this Court finds that no infirmity in the findings arrived at by the Tribunal to that effect.

10. So far as the quantum of compensation is concerned, after going through the evidence and as there was some discrepancy with regard to income of the deceased, this Court feels that a compensation of Rs. 2 lakhs (rupees two lakhs) would be just, proper and adequate. So far as the rate of interest is concerned keeping in view the fact that the accident took place in the year 1997 and the rate of interest prevalent at the relevant time was much higher, this Court feels that the Insurance company shall be liable to pay interest at the rate of 8% per annum instead of 6%.

On the basis of the discussions made above the compensation awarded is reduced to Rs. 2 lakhs (rupees two lakhs) from Rs. 2,13,500.00 but then the rate of interest is enhanced from 6% to 8%.

With the aforesaid modification both the appeals are disposed of. The Insurance Company is directed to deposit the compensation amount along with interest before the Tribunal within eight weeks hence. The statutory deposit made before this Court be returned to the appellant-Insurance Company along with interest accrued thereon on proper application. After the amount is deposited the same shall be disbursed to the petitioners before the Tribunal according to the stipulations made in the impugned judgment.