

(2017) 05 OHC CK 0010

In the Orissa High Court

Case No : 1025 of 2013

National Insurance Company Ltd

APPELLANT

Vs

Seba alias Sabitri Sahu and others

RESPONDENT

Date of Decision : 12-05-2017

Acts Referred:

Citation : (2017) 05 OHC CK 0010

Hon'ble Judges : S. K. Mishra

Bench : SINGLE BENCH

Final Decision : Allowed

Judgement

1. This judgment arises out of two separate appeals, one preferred by the National Insurance Company Ltd., which was opposite party No.2 in Misc. Case No.808 of 1995 of the court of Second M.A.C.T., Cuttack and the second M.A.C.A. No.347 of 2014 is preferred by the claimants. The claimants mainly challenged the award passed by the learned M.A.C.T. on 8-5-2013 in the aforesaid case awarding a sum of Rs. 1,34,300/- with interest @ 6% per annum with effect from the date of filing of the claim petition. The Insurance Company has challenged the entire award on the various grounds, which are discussed in the following paragraphs:

2. The case of the appellants is that on 11-10-1992 at about 1.00 a.m. (night) while the deceased was travelling as an occupant in the offending tourist bus bearing Regn. No.OSP-7539, on the way near Gopalpur, Cuttack the deceased requested the driver to stop the vehicle to pass urine and driver of the bus stopped the vehicle and after passing urine when the deceased about to get into the bus, the driver started moving the bus at a high speed in a rash and negligent manner, as a result of which, the deceased fell down on the ground and the wheel of the bus ran over him inflicting severe injuries on his person and was shifted to S.C.B. Medical College and Hospital, Cuttack, where he succumbed to the injuries. It is stated that the accident took place due to gross negligence of the driver of the offending bus. The deceased was aged about 50 years at the

time of accident and he was working as a Mason and was earning Rs. 1500/- per month. Basing on such plea, the claimants have filed a case claiming compensation amounting to Rs. 1,50,000/-. The Respondent No.3 in the first case and Respondent No.1 in the second case, i.e., the registered owner of the Bus, however, did not contest the case and has been set ex parte.

3. National Insurance Company, the Appellant in first case and Respondent No.2 in the second case, has contested the case and filed written statement evasively denying the averments made in the claim petition. In course of hearing, learned counsel for the Insurance Company gave much stress on the proof of insurance coverage. However, it is seen at column Nos. 14 to 16 of the claim application, the claimants have clearly mentioned that the vehicle was covered under the Policy bearing No.322/92, which was valid from 2-9-1992 to 2-9-1993. The Insurance Company at paragraph 11 of the written statement has taken an evasive denial. It is appropriate to quote said paragraph: " 11. That with reference to the statements contained in column Nos. 14 to 16 of the claim application, this opp. party disputes the statements having no knowledge about the accident and alleged ownership of the alleged offending vehicle. This opp. party does not admit at this stage, if he had issued policy No.322/92 valid from 2-9-92 to 2-9-93 as alleged covering the interest of the owner of the vehicle No. O.S.P. 7539 Tourist Bus." ?

4. On the basis of such plea, the learned Tribunal framed four issues including maintainability and to what relief the petitioner is entitled to. As far as Issues 1 and 2 are concerned, the learned Tribunal has decided that the claim application is maintainable and the deceased has sustained injuries due to rash and negligent driving of the driver of the vehicle bearing Regn. No.OSP-7539 (bus) and the issues are answered in favour of the petitioner. While deciding issues 3 and 4, the learned Tribunal has taken the monthly income of the deceased to be Rs. 1200/- and the contribution to the family to be Rs. 800/- per month and also adopted multiplier of thirteen and accordingly calculated the total loss to the claimants due to the death of the deceased to be Rs. 1,24,800/-. In addition to it, Rs. 9,500/- has been awarded for funeral expenses, loss of consortium and loss of estate. In total, an amount of Rs. 1,34,300/- has been awarded in favour of the claimants and apposite party No.2, the Insurance Company was directed to pay the same.

5. In assailing the judgment, learned counsel appearing for the appellant-Insurance Company submits that in this case firstly there is no proof of a valid policy coverage of the offending vehicle. Secondly, it is contended that there is discrepancy between the Regn. No. of the vehicle in the charge-sheet and in the FIR Thirdly, the compensation has been awarded in favour of the claimants from the date of filing of claim application and it is stated to be 5-7-1993, whereas the claim application has been filed on 27-9-1995.

6. Learned counsel for the claimant-respondent and appellant in MACA No.347 of 2014, on the other hand contends that there is no enough material on record to

show that the vehicle was not covered by a valid policy of the Insurance Company and there is no material on record to show that there is any discrepancy in the Registration No. of the vehicle. He also submits that the deceased being a self-employed person as he was working as a Mason, the amount equal to 30% of his income should have been added to net loss. As per the judgment of three Judge Bench of the Hon''ble Supreme Court in Munna Lal Jain and another v. Vipin Kumar Sharma and others, 2015 (3) TAC 1 (SC) : (2015 AIR SCW 3105), it is contended that the amount of compensation should be raised.

7. Taking all the contentions raised by the rival learned counsels point-wise, it is seen that learned counsel for the Insurance Company has very emphatically argued that there is no proof of the fact that the Insurance Company having an Insurance Policy bearing No.322/92. In support of its contention, learned counsel for the Insurance Company, appellant in MACA No.1025 of 2013, has placed reliance on the fact that the owner of the vehicle has not contested the case and the fact that though a notice was issued to the owner to produce the Registration Certificate and the Insurance Policy in the Court, he did not produce the same and remained absent on the date fixed for hearing.

8. It is apparent from the records that there is enough material to show that the Investigating Officer has seized the R.C. Book, Driving Licence and the Insurance Certificate issued by the National Insurance Company in course of investigation as per the seizure list, dated 8-4-1993, which has been exhibited in this case as Ext. 3. There is no specific denial to the plea of grant of Insurance Certificate earlier, so the plea of the Insurance Company is evasive. Taking into consideration paragraphs 3, 4 and 5 of the award, this Court is of the opinion that in case of no specific denial of the fact asserted by the petitioner, then the fact asserted by the petitioner should be accepted and the judgment can be pronounced on such plea. Moreover, the Insurance Company has not examined any witness on its behalf. Though, the Insurance Company has filed an application for summoning the owner of the vehicle as a witness to be produced with certain documents, on his non-appearance on the date, no further step has been taken to compel the attendance of the witness and the Insurance Company remained silent by issuing summons to the owner of the vehicle.

9. In that view of the matter, this Court is of the opinion that the findings recorded by the learned Tribunal that the vehicle was validly insured by the Insurance certificate was issued by the present Insurance Company need not be disturbed.

10. The second contention is that there is some discrepancy in the number of the registered vehicle. Learned counsel for the appellant-Insurance Company submits that the Company wanted to produce the R.C. Book, but as the owner of the vehicle did not produce the same before the learned Tribunal, it could not produce the R.C. Book. So in absence of any document, the plea regarding discrepancy in the registration number of the vehicle with the registration

number mentioned in the R.C. Book of the vehicle and in absence of any material on record, this Court is not inclined to take up this plea and this Court comes to the conclusion that this is only an afterthought and it cannot be raised for the first time in an appellate court without the same being introduced before the learned Tribunal, which was the original court. Hence, this contention of the Insurance Company is also not acceptable.

11. As far as award of interest from 5-7-1993 is concerned, the contention of the learned counsel for the appellant Insurance Company is correct. Learned Tribunal has awarded from the date of filing of the application, but wrongly it has been mentioned as 5-7-1993. It should be 27-9-1995 i.e., the date of filing of the claim application. Such contention is acceptable. Accordingly, there is necessity of modifying the operative portion of the order.

12. As far as the counter appeal is concerned, which was filed by the learned counsel for the claimants, the only substantial issue is that the deceased was a self-employed person being a mason and, therefore. As per the ratio decided by the Hon'ble Supreme Court in Munna Lal Jain and another v. Vipin Kumar Sharma and others (2015 AIR SCW 3105) (supra), an addition of 30% should have been added to the quantum of loss to the dependant of the deceased. Therefore, this Court allowed the appeal filed by the Insurance Company in part and the appeal filed by the claimants in part. Total amount of compensation of Rs. 1,24,800/- is calculated to which an additional 30% should be added to it. This Court is not inclined to interfere with the award of Rs. 9,500/- towards funeral expenses, loss of consortium and loss of estate. The income of the deceased is taken by the learned Tribunal to be Rs. 1500/- per month. Thus, a sum of Rs. 450/- per month has to be increased due to future prospects. Thus, the monthly income of the deceased has to be taken as Rs. 1950/-. Deducting rd of the aforesaid amount, a sum of Rs. 1,300/- is calculated to be the loss to the claimants monthly. Thus, the annual loss to the family is Rs. 15,600/- and capitalizing the same by multiplier of 13, an amount of Rs. 2,02,800/- is fixed for compensation. Added to it, a sum of Rs. 9,500/- for expenses of loss of consortium and loss of estate, the amount comes to Rs. 2,12,300/- and by rounding up, the amount comes to Rs. 2,12,000/-

13. Thus, both the appeals are allowed in part. The Insurance Company is liable to pay a sum of Rs. 2,13,000/-. According to the award passed by the learned Tribunal, the Insurance Company has already paid Rs. 1,34,000/- to the claimants. It is further stated that the claimants are entitled to get 6% of the aforesaid amount from the date of institution of the claim application i.e. 27-9-1995. The Appellant-National Insurance Company Ltd. (in MACA No.1025 of 2013) is directed to deposit the aforesaid amount within six weeks. On such event and on production of proof of depositing the entire award amount before the Tribunal, the statutory deposit made by the Appellant be refunded to the Insurance Company along with the accrued interest. With the aforesaid observation and direction, both the Motor Accident Claim Appeals are allowed in

part.

Appeal partly allowed.