

(2007) 06 OHC CK 0014
In the Orissa High Court
Case No : M.A.C.A. No. 760 of 2004

New India Assurance Co.

APPELLANT

Vs

Sri Tulu Jena and Another

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 173

Citation : (2007) CLT 1009 (Suppl Crl)

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

Bench : Single Bench

Advocate : Susanta Kumar Dash and Associates, for the Appellant; Bijayananda Samantaray and Associates for Respondent No. 1 and B.K. Biswal and Associates, for the Respondent

Judgement

A.S. Naidu, J.—This is an appeal u/s 173 of the Motor Vehicles Act filed by the New India Assurance Company Ltd. challenging the order dated 8.10.2004 passed by learned 2nd Motor Accident Claims Tribunal, Cuttack in Misc. Case No. 1189/2000.

2. On 29.7.2000 Tulu Jena, Respondent No. 1, was travelling in a Truck bearing Regn. No. OR-04-8618 with some goods. The aforesaid truck, it is alleged, being driven in a rash and negligent manner dashed against a road side tree consequently causing grievous injuries on the person of Tulu. He was taken to Ghatagaon P.H.C. for treatment and thereafter as his condition became serious he was shifted to S.C.B. Medical College Hospital, Cuttack for treatment. It is further alleged that Respondent No. 1 was a Mixture manufacturer and was earning at least Rs. 3,000/- per month. Due to the accident he had become disabled and was unable to earn his livelihood. He claimed a compensation of Rs. 1,50,000/-.

3. The owner of the offending truck did not contest the case before the Tribunal and was set ex parte.

The Insurance Company in its written statement vaguely denied all the averments made in the claim petition. It was stated that the offending vehicle was not validly insured.

4. To substantiate his case, the injured got two witnesses examined and exhibited seven documents. The Insurance Company did not adduce any evidence, either oral or documentary.

5. The Tribunal relying upon the evidence of P.W.1 and P.W.2 who happens to be an eye witness to the accident arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. It also held that in the aforesaid accident claimant- Respondent got severely injured. He was treated initially at Ghatagaon P.H.C. and thereafter at S.C.B. Medical College-Hospital, Cuttack where he was an indoor patient. Relying upon the injury certificate, Ext. A, the Tribunal held that he had sustained as many as six lacerated injuries. Considering the F.I.R, Ext.1, Charge sheet, Ext.2, and other evidence, the Tribunal arrived at a conclusion that the claimant Respondent was travelling in the offending Truck as a passenger with some goods and as such he was entitled to compensation. Taking into consideration his monthly income, permanent physical disability of 40% and other factors like expenses incurred in Hospital, etc. the Tribunal awarded a compensation of Rs. 40,000/ -.

6. The said award is assailed in this appeal mainly on the ground that as the injured was a passenger in a goods vehicle he was not entitled to any compensation. It is further submitted that the Appellant-Insurance Company was prevented from filing any additional written statement and also adducing evidence. Thus the order passed by the Tribunal cannot be sustained.

7. In course of hearing Mr. Dash, learned Counsel appearing for the Insurance Company, submitted that the vehicle involved in the accident was a Truck and as the claimant-Respondent failed to prove that he was travelling in the said Truck with goods within the meaning of Section 147(b)(i) of the M.V. Act, 1988 he was not entitled to any compensation. In support of such contention the Appellant relies upon the decision of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. Vedwati and Others, and other decisions.

8. Learned Counsel for the claimant-Respondent repudiates all the submissions raised by learned Counsel for the Appellant/Insurance Company. Relying upon the written statement filed by the Insurance Company, learned Counsel for the claimant-Respondent submitted that the averments made therein were vague. There was no specific denial with regard to the fact that the claimant-Respondent was travelling in the truck along with his goods. It is further submitted that there is no provision in the CPC for filing any additional written statement. Even otherwise an additional written statement was filed by the Appellant-Insurance Company on 4th October, 2004 but by then hearing of the case had already been concluded and the case was posted for argument. It is further submitted that no petition was filed by the Insurance Company to adduce any evidence whatsoever.

Thus the plea taken at the appellate stage that no opportunity was given to the Appellant-Insurance Company is not correct. He further submitted that a perusal of the order sheet would reveal that hearing of the case concluded on 3.4.2004 and the matter was posted for arguments and the arguments were heard. While matter stood thus on 4.10.2004 an additional written statement was filed along with a petition to accept the same. The said petition was strongly resisted by the claimant and the Tribunal on being satisfied that allowing the Insurance Company to file an additional written statement at that stage would cause prejudice to the claimant and rejected the petition.

9. In the case at hand, admittedly no evidence, either oral or documentary, was adduced by the Appellant-Insurance Company. In his evidence P.W.1 has clearly stated that he was travelling in the truck bearing Regn. No. OR-04-8618 carrying goods. Though he was cross examined at length, nothing could be elicited from him to discredit him. P.W.2, who was stated to be an eye witness, stated that he was accompanying the claimant in the same truck. In the case at hand, the accident took place in the year 2000. In consonance with the amended M.V. Act a person travelling in a goods vehicle along with his goods was covered in consonance with the Insurance Policy and law as it prevailed then. Thus this Court finds no infirmity or illegality in the order passed by the Tribunal.

10. Perused the injury report, Ext. A, the disability certificate, Ext.6, and discharge certificate, Ext.7. The injured had sustained grievous injuries and as would be evident from the disability certificate, Ext.6, he had become permanently 40% disabled. Considering all these aspects, the Tribunal awarded a sum of Rs. 40,000/- as compensation and further directed that the said amount would carry interest " 9% per annum from the date of filing of the claim application.

11. After hearing learned Counsel for the parties, this Court finds no error apparent on the face of record and is not inclined to interfere with the Compensation awarded. But then this Court modifies the rate of interest payable on the compensation amount and directs that claimant-Respondent shall be entitled to interest " 6% per annum instead of 9% as directed by the Tribunal.

With the aforesaid modification this appeal is disposed of.