

(1978) 09 OHC CK 0015

In the Orissa High Court

Case No : Misc. Appeal No's. 49 and 50 of 1976

New India Assurance Co. Ltd.

APPELLANT

Vs

P. Mohalaxmi and Others

RESPONDENT

Date of Decision : 07-09-1978

Acts Referred:

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

Citation : (1979) ACJ 400

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : P. Roy, for the Appellant; Y.S.N. Murty and P.V. Ramdas, for the Respondent

Final Decision : Allowed

Judgement

B.K. Ray, J.—P. Mohalaxmi (Respondent No. 1), widow of P. Papayya, for herself and on behalf of her minor children Respondent Nos. 2 to 5, filed an application u/s 110-A of the M.V. Act claiming compensation of Rs. 20,000/- on account of the death of her husband in a motor vehicle accident before the Second Motor Accidents Claims Tribunal. Her case before the Tribunal was that her husband P. Papayya on the evening of 28.12.73 was returning to his village by a public bus A.P.S. 1909 while P. Papayya was getting down from the bus after it stopped near his village, the driver of the vehicle suddenly started the bus without getting any indication either from the cleaner or from the conductor before P. Papayya had got down. As a result of this, P. Papayya fell down and the vehicle ran over him causing multiple injuries which ultimately resulted in his death the very same day. According to the claimant, her husband was earning about Rs. 180/- per month and with this earning he was maintaining his wife and children. By the death of P. Papayya the claimant was entitled to compensation of Rs. 20,000/-.

2. To the claim petition of Respondent No. 1, the owner of the bus B. Krishna Rao, the insurer and also the driver of the bus were impleaded as opposite parties and notice of the claim was served on them. After notice the owner and

the driver filed a joint written statement and the insurer filed a separate one before the Claims Tribunal denying the material allegation of the claim petition. According to the the owner of the bus, the driver and the insurer, P. Payayya, did not meet with his death in the accident as alleged by the claimant. The aforesaid opposite parties also denied the status of P. Mohalaxmi. It was, however, admitted by the opposite parties in their written statement that at the relevant time and the place the bus in question stopped and that a lame man got down from the bus. According to the O. Ps the lame man was standing on the road after getting down from the bus while the bus left the place.

The Claims Tribunal in the impugned award came to the following conclusions:

- (1) P. Papayya met with death in the accident while getting down from the bus in question.
- (2) In the accident P. Papayya got himself injured and as a result of the injuries he died.
- (3) The accident was due to the negligent driving of the bus.
- (4) P. Papayya's monthly income was Rs. 120/- out of which he was spending for himself Rs. 60/- and was spending Rs. 50/- for the maintenance of his family.
- (5) The age of P. Papayya at the time of his death was 40 years and he would have lived, had he not met with death in the accident, upto 60 years; and
- (6) During 20 years P. Papayya would have contributed Rs. 12,000/- for the maintenance of his family. Upon these conclusions the Tribunal awarded compensation to the claimants after accepting the claimants case that P. Mohalaxmi was the widow and Respondents 2 to 5 were the children of P. Papayya through P. Mohalaxmi at a lump sum of Rs. 10,000/- and directed insurer of the vehicle to pay the entire amount to the claimants.

3. Both the insurer and the owner of the vehicle being aggrieved by the award have preferred M.A. No. 49 and 50 of 1976 respectively. The claimant in each of these appeals has filed a cross objection claiming higher compensation than what has been awarded by the Tribunal. As the two appeals as well as the cross objections involve common questions of law and fact and as parties in all of them are same they have been heard analogously with consent of the learned Counsel for the parties. This judgment therefore governs all of them.

4. I shall first of all take up the cross objections filed by the claimants in each of the appeals. The relationship of P. Papayya with P. Mohalaxmi and her children is not denied before me. The case of the claimant in these cross objections is the same. According to the claimants, the finding of the Tribunal that P. Papayya was earning Rs 4/- per day that out of the said sum of Rs. 4/- he was spending Rs. 2/- on tobacco and tea and that he was only spending Rs. 50/- per month for the maintenance of his family are contrary to evidence on record. This contention of Mr. Murty, learned Counsel for the claimants, is bound to prevail. P.W. 1 the

widow of P. Papayya has deposed in her evidence that the monthly income of her husband was Rs. 180/-, to Rs. 200/-. This evidence of P. W. 1 is corroborated by P. Ws. 2 and 3. The Appellant in the two appeals although examined as many as 4 witnesses before the Tribunal have not led any evidence regarding the income of P. Papayya. In these circumstances it must be said that there is no justification for the Tribunal to come to the conclusion that P. Papayya was spending only Rs. 50/- per month for the maintenance of his family, his income being Rs. 4/- per day.

Mr. Murty also raises a contention in support of the cross objection filed by his client that there is no justification for the Tribunal to hold that P. Papayya was 40 years old at the time he met with his death. According to Mr. Murty, the widow of P. Papayya has deposed that the latter was 38 years old when he met with his death. There being no evidence to the contrary it is urged that the Tribunal should have accepted the version of the widow P. Papayya as correct. I do not agree with this contention. The widow of P. Papayya although had made a bold statement that her husband was 38 years old at the time of his death she has not disclosed the source of her knowledge nor has produced any document in support of her statement. On the contrary, there is the report of the doctor P.W. 5. The Tribunal relying on the report has held that as per the estimate of the doctor P. Papayya was 40 years at the time of his death. That being the position, it cannot be said that the finding of the Tribunal that P. Papayya was 40 years at the time of his death is arbitrary and contrary to evidence.

In view of the evidence regarding the income of P. Papayya as discussed above the conclusion is irresistible that P. Papayya was earning Rs. 180/- per month. Deducting Rs. 60/- for his personal expenses and Rs. 20/- which he must be spending for his the maintenance of his father it follows that he must be held to be contributing Rs 100/- for the maintenance of his family per month. In other words, his annual contribution for the maintenance of his family was Rs. 1,200/-. The Tribunal has held that P. Papayya would have lived up to 60th year had he not met with the accident. This finding was challenged by Mr. Murty and it is urged that the normal span of life of a man must be held to be 65 years. Even if the contention of Mr. Murty is accepted nothing will turn to the advantage of the claimant, because accepting the finding of the Tribunal, on the basis of the calculation I have made regarding the contribution P. Papayya was making for the maintenance of his family, the net amount he would have contributed, had he lived upto his 60th year, comes to Rs. 24,000/-. I therefore hold that deducting 15 per cent out of Rs. 24,000/- which is the loss sustained by the claimants on account of death of P. Papayya, the amount payable as a lump sum comes to Rs. 20,400/-. The claimants having only claimed Rs. 20,000/- they are entitled to that sum only. So even accepting Mr. Murty's contention that the normal span of life of P. Papayya should have been taken as 65 by the Tribunal, no advantage would be derived by the claimants as they cannot be awarded more than Rs. 20,000/-. The cross objection of the claimants is therefore allowed and it is held that claimant is entitled to compensation of Rs. 20,000/- and not Rs. 10,000/- as

held by the Tribunal.

5. Coming to the appeal filed by the insurer, Mr. P. Roy, learned Counsel for the Appellant invites my attention to Section 95(2)(b)(ii)(4) of the Motor Vehicles Act and urges that statutory liability of the insurer has been fixed under the aforesaid provision at Rs. 5,000/- for each individual passenger as the vehicle which met with the accident is a bus carrying passengers and P. Papayya while travelling in the bus as a passenger having met with his death as a result of accident, the insurer cannot be saddled with liability to any extent beyond Rs. 5,000/-. This contention of Mr. Roy is vehemently opposed by Mr. P.V. Ramdas learned Counsel for the owner of the vehicle. After hearing learned Counsel for both the parties at length and after careful scrutiny of the relevant provisions of law referred to above there can be no escape from the conclusion that the insurer in the present case cannot be directed to pay more than Rs. 5,000/- towards compensation that is the limit fixed under the statute MA. 49 of 76 is therefore allowed. The direction of the Tribunal directing the insurer to pay Rs. 10,000/- is set aside and the insurer is directed to pay only Rs. 5,000/- to the claimants.

6. Coming to M.A. 50 of 1976, the appeal filed by the owner of the vehicle Mr. Ramdas urges that on the evidence it cannot be held that P. Papayya met with his death as a passenger in the vehicle in question while getting down from the bus. He invites my attention to the evidence of witness No. 4 examined before the Tribunal for O.P. According to the evidence of this witness he was travelling in the bus in question when the alleged accident took place. This witness deposes that after the bus stopped P. Papayya got down from it and after he got down the driver who was out of the bus came inside the bus and then started it. If this evidence is accepted, it follows that P. Papayya was away from the bus when he met with the accident. On reading the evidence of this witness no reliance can be placed upon the same. The witness has admitted in cross examination that he had not disclosed about his knowledge regarding the accident either to the police or to any authority or to any other person till he deposed before the Tribunal. The witness also has not produced the bus ticket to prove that he was actually travelling at the relevant time. That being the position, the evidence of the witness that he was actually inside the bus when the accident occurred cannot be accepted. So far as the other three witnesses examined on behalf of the O.P. before the Tribunal are concerned, one of them (O.P. 1) was the conductor of the bus. O.P. 2 was the driver of the bus and O.P. 3 was the cleaner of the bus. These witnesses are interested witnesses and are bound to support the case of the Appellant Therefore it is not possible to accept the evidence of these witnesses in preference to the evidence of P. Ws. 1, 2 and 3 examined on behalf of the claimants.

The next point urged by Mr. Ramdas is that the injuries sustained by P. Papayya after the accident show that he had not fallen under the wheels of the vehicle. But on reading of the evidence of P.W. 5, the doctor, I find that he has admitted

that the injuries were possible by a partial runover of a bus wheel. Such being the evidence the contention of Mr. Ramdas is without any force. Accordingly, I do not find any merit in the appeal preferred by the owner which is dismissed.

7. In the result the cross objection of the claimants is allowed. The award passed by the Tribunal is modified. The claimants are held to be entitled to Rs. 20,000/- as compensation. M.A. No. 49 is allowed and in modification of the award of the Tribunal I direct the insurer Appellant in M.A. No. 49 of 76 to pay to the claimants sum of Rs. 5,000/- out of Rs. 20,000/- and further direct to owner, Appellant in M.A. No. 50 of 76, to pay the balance sum of Rs. 15,000/- to the claimants towards compensation. The amounts directed to be paid by the insurer and the owner of the bus shall carry interest at 6 per cent per annum from 15.12.75 till the date of realisation. There would be no order for costs so far as this Court is concerned.