
(1999) 06 OHC CK 0016

In the Orissa High Court

Case No : Miscellaneous Appeal No. 698 of 1997

New India Assurance Co. Ltd.

APPELLANT

Vs

Sadasiv Misra and Others

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (1999) 2 OLR 159

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M. Sinha and S.K. Mohanty, for the Appellant; S.K. Sanganerla, P.C. Pattanaik and B. Palta Singh (Rs. 1-4), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The Insurance Company has filed this appeal challenging the award of the Claims Tribunal. A cross-objection has been filed on behalf of the claimant-respondents 1 to 4 claiming higher compensation.

2. Claimant-respondents 1 and 2 are the parents of deceased Nihar Ranjan Misra, whereas respondents 3 and 4 are his brother and sister. The accident took place on 26.5.1996. The deceased was going as a pillion rider on a Hero Honda Motor-cycle. Since there was some mechanical trouble in the motor-cycle, the same was parked on the left-side of the morum flank of the road and the deceased was cleaning the spark-plug of the motor-cycle. At that time the offending truck came and dashed against the deceased and ultimately the truck wheel ran over the chest of the deceased who succumbed to the injuries while he was being shifted to Jajpur Hospital. At the time of the accident the deceased was working as a Junior Engineer under the State Government and was aged about 30 years. Claim application was filed claiming Rs. 8 lakhs as compensation.

3. The owner filed a written statement denying his liability. It was claimed that the accident occurred due to sudden mechanical trouble in the vehicle and not

due to any rash driving. The Insurance Company filed written statement generally denying the allegation made in the claim application.

4. The Claims Tribunal found that the accident occurred due to negligent driving of the truck driver. It further found that only the parents of the deceased were entitled to compensation. Calculating the compensation on various heads, the Claims Tribunal held that claimant-respondents 1 to 2 were entitled to sum of Rs. 3,56,500/- which was directed to be paid by the Insurance Company with interest at the rate of 12 per cent from the date of application. The aforesaid award is being challenged by the Insurance Company. A cross-objection has been filed by the claimant- respondents claiming higher compensation.

5. The main questions raised by the Insurance Company relate to questions of negligence and quantum. It has been observed by the Supreme Court in the decisions reported in 1997 (2) TAC 1 (SC) (Narendra Kumar and Anr. v. Yarenissa and Ors.) and Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, that unless the Insurance Company is permitted to contest a proceeding on merit in accordance with the provisions contained in Section 170 of the Motor Vehicles Act, 1988 (in short, the "Act"), it has got no right to defend the proceeding by challenging the question of negligence or quantum and appeal at its instance cannot be entertained. In this connection, it has been contended by the counsel for the appellant that though the owner had filed written statement, subsequently he remained ex parte and from order dated 28.2.1997 of the Tribunal it is apparent that after the owner was set ex parte, the trial began and the Insurance Company was permitted to cross-examine the witnesses. He, therefore, submits that the aforesaid amounts to permission to contest the proceeding on merit, as contemplated in Section 170 of the Act. From the latter decision of the Supreme Court 1998 (2) TAC 379 it is apparent that there is no question of any implied permission in such matters and an express order is required. In the present case, admittedly the order-sheet does not indicate that the Insurance Company was expressly permitted to contest the proceeding on merit. The position of law is no longer in doubt in view of the categorical decision of the Supreme Court.

6. Even on merit, the contentions raised by the counsel for the appellant cannot be accepted. The driver of the truck has not been examined. The finding relating to negligence is based on the evidence of eye-witness. In the absence of any other material, it cannot be said that the conclusion of the Claims Tribunal on this score is vulnerable.

7. The appellant has contended that the quantum is on the higher side. On the other hand, the claimant-respondents have filed cross- objection claiming higher compensation. Admittedly, the deceased was working as a Junior Engineer under the Government. The Claims Tribunal has considered Rs. 4,000/- to be the average income. Prima facie, of course, the multiplier may appear to be high. However, it cannot be disputed and, in fact., judicial notice can be taken of the fact that the revised pay-scale has been now made available to employees of the

State Government. Having regard to all these aspects, it cannot be said that the compensation awarded by the Claims Tribunal is either excessively high or excessively low, so as to warrant interference in an appeal u/s 173 of the Act. Law is now well settled that unless the quantification is grossly high or grossly low, in normal circumstances, an appellate Court should not interfere with the quantification.

8. For the aforesaid reason, I do not see any reason either to enhance the compensation awarded, or to reduce the same. Accordingly, the Misc. Appeal and the Cross-Objection are dismissed. There is no order to costs.