(2001) 08 OHC CK 0012

In the Orissa High Court

Case No : Miscellaneous Appeal No. 172 of 2000

New India Assurance Co. Ltd. — APPELLANT

Vs

Smt. Rama Dei and Others — RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:
Motor Vehicles Act, 1988 — Section 141, 173

Citation : (2003) ACJ 687 : (2001) 2 OLR 583

Hon'ble Judges : B. Panigrahi, J

Bench : Single Bench

Advocate : Debasis Das, for the Appellant; Tapan Kumar Mohanty, M. Mohanty (Rs. 1-5), B.H. Mohanty, R.K. Nayak, D.P. Mohanty and T.K. Mohanty (R-6), for the Respondent

Judgement

B. Panigrahi, J.—At the time of admission, learned Advocate appearing for the parties have requested to take up the matter on merits. Accordingly, they addressed arguments at length.

2. Claimant-respondents 1 to 5 are the legal heirs and successors of deceased Krushna Chandra Moharana, who was serving as a Senior Stenographer in the Orissa Secretariat in the Agriculture Department. On the faithful day i.e. on 22.8.1997 at about 9.45 A.M., said Krushna Chandra Moharana, while proceeding towards Cuttack from Phulanakhara Chhak and was going on the left side of the road, the offending bus named ''Sonax'' bearing registration number ORU 8584 dashed against said Krushna Chandra Moharana and ran over him. The offending vehicle was coming from opposite direction, namely from Bhubaneswar and proceeding towards Cuttack. The victim was immediately shifted to the S.C.B. Medical College and Hospital, Cuttack, where he was declared dead. At the time of death, his pay was fixed under the revised scale at Rs. 7,680/-. The victim has left behind his widow and four children who filed the claim application demanding compensation of Rs. 7,26,000/- from the owner as well as the Insurer.

3. Despite service of notice, since none'' has appeared on behalf of the owner,

the matter was contested between the Insurance Company and the claimants. The case of the Insurance Company was that since the offending vehicle was being driven by a person having no valid driving licence, it was not liable to pay any compensation. It also pleaded that the vehicle was not covered by insurance and that the claim was excessive.

4. The learned Tribunal while computing the amount of compensation seems to have adopted 7 multiplier. In certain cases the Tribunal can also apply upto 15 multiplier while computing the amount of compensation. Since no cross-appeal has been filed by the claimants, I need not like to advert to that question. Ultimately, the Tribunal has fixed the compensation at Rs. 4, 62,200/- and directed the Insurance Company to pay the entire compensation amount. Hence, the present appeal at the instance of the Insurance Company.

5. Learned counsel for the appellant reiterates the grievance by stating that since the offending vehicle was being driven by a person having no valid driving licence, therefore, the Insurance Company is not liable to pay the compensation. It is no longer res integra that liability of the Insurance Company cannot be disowned on account of the vehicle being driven* by a person having no valid driving licence. Such ground does not hold any water. The aforesaid point has already been settled at rest in view of the decision of this Court reported in Chenna Jyothirmayi and Others Vs. Third Motor Accident Claims Tribunal, Bhubaneswar and Others, .

6. The learned counsel appearing for the appellant has, however, submitted that the amount seems to be on higher side even adopting 7 multiplier and let a reasonable amount be deducted and the balance amount may be directed to be paid by the Insurance Company. Learned counsel appearing for the claimants in their anxiety also agreed that if a reasonable amount is deducted, he will have no objection. While striking a balance, it is seen that the deceased has left behind four children apart from his widow who were dependants on him and they have no other means of income for sustenance. The deceased while in service met the accident and finally died. In the aforesaid situation, I, therefore, assess a comprehensive, composite and lump sum amount of compensation of Rs. 4,20,000/- (Four lakhs and Twenty thousand) payable to the claimants. The Insurance Company is directed to pay the compensation along with interest at 12% from the date of application, i.e. 27.9.1997, till payment.

7. It appears that a sum of Rs. 25,000/- has been deposited by the Insurance Company in this Court which is kept in a fixed deposit. It appears that the cheque for Rs. 25.000/- dated 14.9.2000 was filed here. In such situation, the Insurance Company is directed to deposit balance sum of Rs. 3,95,000/- towards compensation along with interest calculated at the rate of 12% from 27.9.1997 till 14.9.2000 on Rs. 4,20.000/- and on Rs. 3,95,000/- from today till payment. The Insurance Company is further directed to make the deposit within two months from today before the Claims Tribunal. On such deposit being made, the learned Tribunal shall take steps to invest the said amount in any nationalised

bank for a period of ten years in equal proportion in the names of different claimants as indicated in its order. The amount of Rs. 25,000/- along with accrued interest shall be transferred to the Claims Tribunal and the said amount and any balance amount remaining after making the investment in the names of the claimants shall be paid to claimant-respondent No. 1 on proper identification.

Subject to the aforesaid modification of the award of the Claims Tribunal, the Misc. Appeal is disposed of.