
(2013) 09 OHC CK 0052
In the Orissa High Court
Case No : M.A.C.A. No. 1071 of 2009

O.I. Co. Ltd.

APPELLANT

Vs

Sabita Pradhan

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) 09 OHC CK 0052

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

S.C. Parija, J.—Heard learned counsel appellant-Insurance Company, learned counsel appearing for the claimants-respondent Nos. 1 and 2. None appears for the owner-respondent No. 3, inspite of service of notice. This appeal by the Insurance Company is directed against the judgment/award dated 22.09.2009, passed by the Third Motor Accident Claims Tribunal, Bargarh, in M.A.C. Case No. 53 of 2008, awarding an amount of Rs. 4,00,000/- as compensation to be deposited within two within two months, failing which, interest @ 9% shall be payable.

2. Learned counsel for the appellant-Insurance Company submits that as the driver of the offending motorcycle bearing No. OR-17-E/7883 did not possess a valid and effective driving licence at the time of the accident, no liability could have been saddled on the present insurance, as the insurer of the offending motorcycle. In this regard it is submitted that as the learned Tribunal has come to find that the owner of the motorcycle, who was driving the same at the time of the accident did not possess a driving licence, which was in gross violation of the policy condition, the liability to pay the compensation amount should have been fixed on the owner of the motorcycle. It is further submitted that in absence of any evidence with regard to income of the deceased, learned Tribunal has erred in taking the monthly income of the deceased at Rs. 9,000/- per month, for calculating the compensation amount payable. It is further submitted

that as there was no documentary evidence with regard to the age of the deceased was below 50 years at the time of his accidental death, learned Tribunal erred in applying the multiplier of 13 to calculate the compensation amount payable.

3. Learned counsel appearing for the claimants-respondent Nos. 1 and 2 submits that the assessment of the income and age of the deceased has been made by the learned Tribunal considering the oral evidence adduced by P.Ws. 1 and 2 and taking into consideration the evidence under Exts. 1 and 3. It is further submitted that the claimants are entitled to interest on the awarded compensation amount from the date of filing of the claim application, as provided u/s 171 of the M.V. Act.

4. On perusal of the impugned award it is seen that learned Tribunal has come to hold that owner of the motorcycle bearing No. OR-17-E/7883, who was driving the motorcycle at the time of his accident did not possess a valid driving licence. On the plea that the said motorcycle is a newly purchased vehicle, learned Tribunal proceeded to saddle the liability on the insurer.

5. As regards the assessment of the compensation amount, learned Tribunal has taken into consideration the evidence on record, both oral and documentary, in coming to hold that the deceased who was a "Kabiraj" as per Ext. 1, was earning Rs. 9,000/- per month. Taking the age of the deceased to be not exceeding 50 years, as per the post-mortem report (Ext. 3), learned Tribunal has applied the multiplier of "13" to calculate the compensation amount payable. No interest has however been awarded on the compensation amount.

6. Considering the grounds taken in the appeal and the submissions made by learned counsel for the parties and keeping in view the findings of the learned Tribunal with regard to the quantum of compensation amount awarded and the basis on which the same has been arrived at, I feel, the interest of justice would be best served if the awarded compensation amount of Rs. 4,00,000/- is modified and reduced to Rs. 3,00,000/- (rupees three lakhs), which is payable to the claimants. The claimants are also entitled to interest @6% per annum from the date of filing of the claim application. The impugned award is modified to the said extent.

7. The appellant-Insurance Company is directed to deposit the modified compensation amount of Rs. 3,00,000/- (Rupees three lakhs) along with interest @6% per annum, from the date of filing of claim application with the learned Tribunal within six weeks hence. On deposit of the said amount, the same shall be disbursed to the claimants proportionately as per the direction of the learned Tribunal given in the impugned award.

8. It is open for the appellant-Insurance Company to seek recovery of the compensation amount from the owner of the vehicle, if recoverable, in accordance with law.

9. The statutory amount deposited in the Registry of this Court along with accrued interest thereon shall be refunded to the appellant-Insurance Company on production of receipt showing deposit of the modified compensation amount and interest before the learned Tribunal. M.A.C.A. is accordingly disposed of.