
(1986) 02 OHC CK 0034
In the Orissa High Court
Case No : Misc. Appeal No. 29 of 1982

Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Sarala Behera and Others	RESPONDENT

Date of Decision : 04-02-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B, 110D, 96(2)

Citation : (1986) 02 OHC CK 0034

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

Bench : Single Bench

Advocate : Ramanath Das, for the Appellant; P.K. Mishra, J.P. Mishra, B.N. Mishra, N.C. Pati and J.R. Das, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Insurer is the Appellant in this appeal u/s 110-D of the Motor Vehicles Act, 1939 ("the Act" in short hereafter).

2. Widow, two minor daughters, parents and the brother of deceased Braja Kishore Behera, aged about 30 years are the claimants. On 12.4.1980, the deceased sustained injuries in an accident caused by a truck bearing registration No. 2257. The deceased was a majdoor in Calcutta dock who came home on leave. At the time of accident, he was drawing salary of Rs. 590.49 paise per month. He had the promotional prospect of being a sardar in the dock. He would have retired at the age of 58 years.

3. While the deceased was going on a cycle with his daughter, the truck came and dashed the deceased from behind resulting in his death at the spot. The claimants filed an application u/s 110-A of the Act on 14.5.1980 for compensation of Rs. 1,10,400/-. On notice the insurer and the owner of the vehicle appeared and filed two separate written statements objecting to the claim. The insurer accepted its liability to indemnify the owner as per the terms of the policy.

4. The Tribunal on consideration of the materials on record found negligence on the part of the driver of the truck and assessed the compensation at Rs. 37,500/-. The insurer has preferred the appeal and the claimants have preferred the cross-objection.

5. The owner having contested before the Tribunal, the scope of the appeal by the insurer is limited. Mr. Ramanath Das, the learned Counsel for the insurer-Appellant relying upon the Full Bench decision of this Court reported in National Insurance Co. Vs. Magikhaia Das (After him) Mst. Laxmi Dibya and Others, submitted that the insurer can also challenge the liability of the owner since there is usually a clause in the policy whereunder the insurer is authorised by the owner to contest the claim on his behalf. In this case, however, the policy has not been produced to find out if such a clause was incorporated in the policy. Besides, in the Tribunal, the owner was contesting. This appeal has not been filed on behalf of the owner. In the circumstances, in the present appeal, there is no scope for the insurer to challenge the order of the Tribunal except on merits which is to be confined to the grounds available u/s 96(2) of the Act only. The entire submission of Mr. Ramanath Das, the learned Counsel for the insurer Appellant was on merits only and the liability of the insurer has not been assailed on any ground available u/s 96(2) of the Act.

6. Although there is no scope to assail the award on merits, I considered the submission of Mr. Das on merits also. While not disputing the death of the deceased as a result of the accident, Mr. Das submitted that there is contributory negligence on the part of the deceased. In this regard, he submitted that the driver and the helper of the truck have given their evidence which should have been relied upon by the Tribunal. Independently considered, I am not able to accept their evidence in face of the clear evidence of the independent and disinterested eye-witness (PW 2), who was another cyclist going near about the place of accident. The finding of the Tribunal in this regard is affirmed.

7. Both the insurer and the claimants are not satisfied with the determination of the compensation by the Tribunal. While Mr. Das for the insurer-Appellant submitted that the determination of Rs. 250/- to be the contribution of the deceased to the family is on a higher side since it is not possible for an employee in Calcutta to spare Rs. 250/- out of Rs. 590/- for the family. Mr. Misra for the claimants submitted that the Tribunal has not taken into consideration the future rise in the salary and the prospect of promotion of the deceased. Mr. Misra farther submitted that clear evidence having been available in support of the monthly support of the deceased to the family and the duration of the service career, compensation ought to have been determined on that basis.

8. There is no material as to what would be the expenditure of a person in Calcutta. In absence of the same the finding of the Tribunal that Rs. 250/- per month was being contributed to the family cannot be said to be unjust.

9. Mr. Misra submitted that the cross-objection filed by the Respondents should

be allowed even accepting the monthly contribution of Rs. 250/- per month at the time of the death of the deceased since the deceased had promotional prospect as well as the prospect of rise of salary in the same post. He submitted that the evidence of PW 4 clearly shows that on promotion, the deceased would have got a salary of at least Rs. 1,000/- per month. In the absence of the period that would have taken for promotion, the length for which he would have continued in the promotional post or the scope of rise of the monthly income even in the post which was held by the deceased, it will only be a surmise to arrive at any definite figure. u/s 110-B of the Act, though a reasonable guess work is permissible for determining the just compensation, it would be arbitrary to arrive at a conclusion on surmises. Therefore, in the absence of better materials in this case, I affirm the assessment of Rs. 250/- per month to be the contribution of the deceased to the family.

10. The deceased was about 30 years at the time of his death. He would have served for twenty eight years more. Since the loss of pecuniary benefit of the claimants has been assessed at Rs. 250/- per month, the annual loss comes to Rs. 3,000/-. In twenty eight years, the loss would be Rs. 84,000/-. In this Court, one sixth is being deducted towards uncertainties and lump sum payment. Thus, the compensation payable comes to Rs. 70,000/-.

11. Coming to the submission of Mr. Misra that the future promotional prospect and rise of income which should have been taken into consideration, I may point out that in case the amount of Rs. 70,000/- would be invested either by purchase of National Savings Certificate to make it double within six years or kept as fixed deposit in a bank to carry 8% interest, the amount which would be available, would be sufficient to meet the future prospects. Accordingly, no further amount need be paid as compensation on that account.

12. Mr. Ramanath Das submitted that in case of enhancement of the compensation, the insurer would be liable to the extent of Rs. 50,000/- only. In case, the insurance policy could have been produced, the extent of liability could have been spelt out. In the absence of the policy, it can be inferred that the policy was not produced since the wider liability would be proved. In the circumstances, the insurer is liable to pay the entire amount of compensation with interest.

13. In case the insurer deposits the entire compensation amount on or before 31st March, 1986, the amount will carry interest at the rate of six per cent per annum from the date of application till the date of deposit. The payment of Rs. 15,000/- on 16.9.1983 shall be adjusted at the aforesaid rate of interest. The balance amount if not deposited with the Tribunal on or before 31.3.1986, shall carry interest at the rate of 10 per cent per annum from the date of application till the date of deposit.

14. In the facts of this case, apportionment of the compensation among the claimants would be in the interest of justice. All the claimants including the

brother of the deceased have already received Rs. 15,000/- towards compensation. The brother claimant Duryodhan Sahu shall not be entitled to any further compensation. The balance amount on deposit or realisation shall be paid to the parents of the deceased, his widow and minor children. Parents shall be paid fifteen per cent of the amount and the balance eighty five per cent shall be paid to the widow and the two minor children.

15. Under the Act, the Tribunal is to get the amount collected and disbursed. Therefore, the insurer shall deposit the amount with the Tribunal. On receipt of the amount, the Tribunal shall disburse the fifteen per cent to the parents. It shall pay Rs. 5,000/- to the widow for herself and her two minor children. The balance out of the eighty five per cent shall be disbursed to the widow and the minor daughters in the following manner.

(a) Three-fourths shall be converted to National Savings Certificates in the names of the two minor children half and half under the guardianship of their mother, the widow of the deceased.

(b) The balance one-fourth shall be invested in the joint names of the widow and the two minors for a period of at least three years in such manner that the interest is available to the widow-claimant half yearly. After three years, the principal amount can be available to the widow.

16. In case the Tribunal finds difficulty in working out the directions, the Member-Secretary of the State Legal Aid and Advice Board shall be requested to render the legal service of the Board to assist the widow and the minors to make the investments.

17. A copy of this judgment is to be sent to the Member-Secretary of the Legal Aid and Advice Board, Orissa who is directed to render the assistance to the widow and the two minor children, as indicated above.

18. In the result, the appeal is dismissed and the cross-objection is allowed in part. There shall be no order for costs in this appeal.