(2004) 10 OHC CK 0039

In the Orissa High Court

Case No : M.A.C.A. No. 104 of 2004

Oriental Insurance Co. Ltd. APPELLANT

Vs

Kalpalata Mohapatra and Others RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Citation : (2005) 1 ACC 430 : (2006) ACJ 1171 : (2004) 2 OLR 660

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : G.P. Dutta, K.C. Nayak, D. Jain and M.K. Swain, for the Appellant; L. Samantaray, B. Beura, B. Samantaray and B.K. Mohanty, for the Respondent

Judgement

A.S. Naidu, J.—The award dated 30.8.2003 passed by the First Additional District Judge-cum-1st M.A.C.T., Cuttack in M.V. Misc. Case No. 569 of 2001 is assailed in this appeal by the insurer. On the basis of a petition filed by the widow and the minor child of late Durga Charan Poi, respondent Nos. 1 and 2, M.V. Misc. Case No. 569 of 2001 was initiated. It was averred in the petition that on 8.5.2001 at about 9.10 a.m., while proceeding on his scooter, at Naranpur Chhak under Jaipur P.S. the deceased was run over by a truck bearing registration No. OSU 7087. After the accident, he was removed to S.C.B. Medical College Hospital, Cuttack where he succumbed to the injuries. Durga Charan Poi, at the time of his death, was about 40 years old and he was serving as an officer in Canara Bank. His monthly salary was Rs. 18,000. It was averred in the claim petition that the deceased was contributing a sum of Rs. 17,000 towards family dependency/ maintenance. After receiving notice, the owner as well as the insurance company appeared and filed their written statements before Tribunal. The owner while vaguely repudiating the averments made in the claim petition took a stand that the offending truck was insured with the appellant insurance company and the insurance was valid on the date of accident.

2. The insurance company in its written statement vaguely denied the allegations levelled in the claim petition and called upon the claimants to give strict proof

thereof.

3. The Claims Tribunal on the basis of the pleadings, framed four issues. The claimant examined three witnesses and exhibited thirteen documents including salary certificate and detailed pay particulars of late Durga Charan. On behalf of the opposite parties, no witness was examined and only two documents were exhibited.

4. The Tribunal after vivid discussion of the evidence, both oral and documentary, arrived at a conclusion that the accident took place due to rash and negligent driving of the offending truck. It was also held that the said truck was duly insured with the appellant insurance company and the insurance was valid on the date of accident.

5. Taking the monthly gross income/ salary of the deceased to be Rs. 16,000, the Claims Tribunal awarded an amount of Rs. 16,25,000 as compensation. It was further directed that the insurance company shall be liable to pay the aforesaid compensation within 30 days with interest at the rate of 9 per cent per annum from the date of filing of the case, i.e., 10.7.2001 till the date of realisation.

6. The appellant insurance company has assailed the said award mainly on the ground that the Tribunal has acted illegally and with material irregularity in assessing the compensation taking the gross salary of the deceased. According to Mr. Dutta, the learned Counsel for the appellant, the Tribunal should have calculated the compensation taking into consideration the net income of the deceased. Mr. Dutta also submits that the Tribunal has also committed error in application of multiplier and the rate of interest. Learned Counsel for the claimants-respondents, however, supported the award and submitted that the deceased was an officer of a bank and he has left behind his young widow and minor child. The accident having been admitted, the insurance company is precluded from challenging the quantum of compensation. According to the respondents, the Tribunal has considered all the aspects and the order does not suffer from any illegality and the appeal should be dismissed in limine.

7. Heard learned Counsel for both the parties and considered the materials available on record diligently. It is no more res integra that compensation should always be just and it cannot be a bonanza. The expression ''just'' denotes equitable, fair and reasonable. In other words, the compensation awarded should not be tainted with arbitrariness. [See The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another,].

8. Keeping the above principle in mind, materials available were scanned through. The evidence reveals that Claims Tribunal has rightly come to the conclusion that the accident was caused due to rash and negligent driving of the truck, that the truck was validly insured on the date of the accident. Thus, the insurance company is liable to pay the compensation.

9. The only other question which needs to be considered is whether the Tribunal has rightly assessed the compensation or not. In the case of Lata Wadhwa and Others Vs. State of Bihar and Others, , the Apex Court held that the manner of assessing the damages is to ascertain the net income of the deceased which was available for the support of himself and his dependants and to deduct therefrom such part of income as the deceased was accustomed to spend upon himself towards self-maintenance and pleasure. It is also very much necessary to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants.

10. Taking into consideration the said principle, it is held that while calculating the compensation, the court should bear in mind that out of the net income, a person approximately spends 1/3rd for personal expenses and 2/3rd for the benefit of the dependants.

11. Considering the materials in the light of the discussions made above, I find that the Claims Tribunal acted erroneously in calculating the compensation, taking into consideration the gross income and not the net income of the deceased. Accordingly, I modify the compensation of Rs. 16,25,000 awarded by the Tribunal and direct that the claimant-respondent Nos. 1 and 2 shall be entitled to a compensation of Rs. 14,45,000. It further appears that the Tribunal has awarded interest at the rate of 9 per cent per annum. As has been held by the Supreme Court in the case of Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , the rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy and policy being adopted by Reserve Bank of India from time to time.

12. In view of the above, I direct that the claimants shall be entitled to the interest at the rate of 6 per cent instead of 9 per cent per annum from the date of filing of claim application, i.e., 10.7.2001 till the date of realisation. Out of the compensation amount, a sum of Rs. 14,00,000 with proportionate interest accrued thereon, be kept in non-encumberable fixed deposit jointly in the names of respondent Nos. 1 and 2, i.e., the widow and the minor son of the deceased, in any nationalised bank for a period of six years. The balance amount of compensation be released in cash.

13. With the aforesaid modification of the award of the Tribunal, the M.A.C.A. is allowed in part. Parties to bear their costs of this Court.