
(2008) 11 OHC CK 0030
In the Orissa High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Manthani Parida and Others

RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) CLT 915 (Suppl CrI) : (2009) 1 OLR 392 : (2009) OLR 915 (Suppl CrI)

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

Bench : Single Bench

Judgement

A.S. Naidu, J.—M/s. Oriental Insurance Company has filed this appeal u/s 173 of the Motor Vehicles Act assailing the Award passed by the learned 2nd Motor Accident Claims Tribunal, Cuttack in Misc. Case No.490 of 1998.

2. On 17.4.1998 at 7.00 p.m. while one Chandramani Parida was going on his cycle on Paradip-Daitari Express Highway, near a place known as "Baunsadola" a scooter bearing registration number OR-05-C-0800 drive in a rash and negligent manner dashed against him. As a result of this accident he fell down sustaining grievous injuries. He was removed to nearby Dharmasala PHC where he succumbed. His widow, minor children and widowed mother filed the aforesaid Misc. Case before the Tribunal claiming compensation stating that he was working as a Supervisor in a quarry, called "Bahua Quarry" earning Rs. 4000.00 per month.

3. The owner of the offending scooter in spite of receipt of notice did not appear before the Tribunal.

The appellant-Insurance Company filed a written statement vaguely denying the averments and claim for compensation.

4. The Tribunal after discussing the evidence in extenso and being satisfied that the accident and death had occurred due to rash and negligent driving of the aforesaid scooter, awarded a compensation of Rs. 1.61,000.00 with interest

thereon at the rate of 6% per annum from the date of filing of the claim petition, i.e. 13.5.1998. The said award is assailed in this appeal mainly on the ground that in fact the scooter OR-04-7980 had caused the accident as would be evident from the FIR lodged with police relating to the accident, and other materials. But then it was found that subsequently the said scooter was substituted and scooter bearing registration number OR-05-C-0800 was shown to have caused the accident. In support of such fact, learned Counsel for the appellant, relied upon the FIR lodged with police relating to the accident in question as well as the statement of OPW-1,, the investigator of the Insurance Company, and his report Ext.A.

4. The submissions of the learned Counsel for the appellant are strongly repudiated by learned Counsel for the claimant-respondents. Relying on the evidence of PW-1, who was an eye-witness to the accident, it was submitted that in fact two scooters were going one after the other at the time of the accident and as such there was some confusion as to which scooter caused the accident. According to learned Counsel for the respondents after due inquiry police arrived at the conclusion that scooter bearing registration number OR-05-C-0800 had caused the accident and, as such, the allegation that the said scooter was substituted for the real scooter which caused the accident was not correct. He also repudiated the submission of the learned Counsel for the appellant-Insurance Company that the scooter OR-05-C-0800 was under repair, submitting that OPW-1 in his evidence before the Tribunal has stated that scooter OR-04-7980 was not involved in the accident in question.

5. In view of the aforesaid statement of OPW-1 who was the own witness of the appellant-Insurance Company, the Tribunal rightly came to the conclusion that the appellant was liable to pay the compensation. Of course while awarding compensation, law is well settled that compensation should not be like a bonanza, but that must be just and proper. Considering the facts and circumstances of the case and the materials available on record, this Court feels that the compensation awarded by the Tribunal is slightly on higher side and if that is reduced to Rs. 1,50,000.00 maintaining the award of interest would be just and adequate. This Court modifies the impugned award accordingly.

6. With the aforesaid modification of the impugned award this Court disposes of the MACA, and directs the statutory deposit made by the appellant before this Court to be returned to the appellant with interest accrued thereon, if any.