(2004) 01 OHC CK 0006

In the Orissa High Court

Case No : Misc. Appeal No. 543 of 2000

Oriental Insurance Co. Ltd. APPELLANT

Vs

Rahil Jacob and Another RESPONDENT

Date of Decision : 16-01-2004

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 1 ACC 523 : (2004) 1 OLR 360

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : G.P. Dutta, A.K. Jena and K.C. Narendra, for the Appellant; A. Patnaik and S. Samantray, for the Respondent

Judgement

B.P. Das, J.—Oriental Insurance Company Ltd. has preferred this appeal u/s 173 of the Motor Vehicles Act, 1988 challenging the award dated 14.10.1999 passed in M.A.C.T. Misc. Case No. 55/1184 of 1993/1990 by which the 3rd Motor Accidents Claims Tribunal. Puri, has awarded compensation of Rs. 3,30,000/- together with interest '' 12% per annum for the death of the mother of claimant-respondent No. 1 in a motor vehicular accident on 6.1.1990 in Bhubaneswar town.

2. Claimant-respondent No.l, the minor son of the deceased, filed a claim application before the 3rd Motor Accidents Claims Tribunal, Puri, stating therein that on 6.1.1990 at about 11.00 a.m. while his mother, after attending the final law examination, was returning to her residence in a rickshaw, near A.G. Square the rickshaw-puller stopped his rickshaw seeing the red-light signal at the traffic post. At that time an Ambassador car bearing registration number AAV 7227 came at a high speed in a rash and negligent manner without blowing horn and dashed the rickshaw from behind. As a result of such accident, the deceased sustained severe injuries and on her way to the hospital succumbed to the injuries. It was stated that the deceased was a young lady of 26 years and after completing her graduation in Rama Devi Women''s College was prosecuting her

study in law. The claimant filed the application claiming compensation of Rs. 6,20,000/-.

3. The Tribunal framed as many as four issues and on evaluating the materials on record came to hold that the deceased died in the vehicular accident which occurred due to the rash and negligent driving of the driver of the offending car bearing registration number AAV 7227 for which the claimant was entitled to compensation. The Tribunal having regard to the fact that the deceased was a law student and had good future prospects held that she could have earned Rs. 2,000/- per month and could have contributed Rs. 1,500/- per month for the maintenance of the family. Since the deceased was aged 26 years, the Tribunal applied the multiplier of 18 and assessed the compensation at Rs. 3,24,000/- besides allowing a sum of Rs. 6,000/- towards the obsequies ceremony of the deceased. Thus the Tribunal awarded a total compensation of Rs. 3,30.000/- in favour of the claimant, i.e., the minor son of the deceased, and directed the insurer to indemnify the owner of the offending vehicle since the vehicle was duly insured with it.

4. The aforesaid award is under challenge in the present appeal on the ground that there was no material before the Tribunal to hold that the income of the deceased would Rs. 2,000/- per month out of which her contribution to the family would be Rs. 1500/- per month. The further ground taken is that the driver of the offending vehicle did not possess a valid driving licence.

5. Law is well settled that the insurer cannot file an appeal questioning the quantum of compensation as well as the finding as regards negligence or contributory negligence of the offending vehicle unless permitted u/s 170 of the Act. (See National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, . In this case no permission has been granted. That apart, the question of breach of policy condition on account of the vehicle being driven without a valid driving licence at the time of the accident for which the insurance company was not liable to indemnify the owner of the vehicle, is no more res integrain view of the decision of the Apex Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , and has no bearing on the payment of compensation to third parties. The Apex Court in paragraph 22 of the aforesaid decision observed :

"....When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."

Besides, a perusal of the charge-sheet filed by the police reveals that no proceeding against the driver of the offending vehicle was initiated u/s 181 of the M.V. Act. 1988.

Law is also well settled that in cases where compensation awarded is too high or too law, appellate Court can interfere with the quantum. In the present case, as it appears, the deceased was not an earning person but she was studying final year law which has weighed with the Tribunal to assess her income at Rs. 2,000/- per month. That apart, the Tribunal has also considered the plight of the child who was aged two years only at the time when his mother died in the accident. According to the learned counsel for the appellant, the amount indicated as the notional income of a non-earning member in the Second Schedule to Section 163-A of the Act for the purpose of assessing the compensation is squarely applicable to the present case.

6. Taking into consideration the rival contentions of the counsel for the parties and the facts and circumstances of the case, I fix the monthly income of the deceased notionally at Rs. 1,800/- per month, as against Rs. 2,000/- fixed by the Tribunal, and after deducting one-third therefrom towards personal expenses, determine the monthly dependency of the deceased at Rs. 1,200/-, which comes to Rs. 14,400/- per annum. Taking into consideration the age of the deceased, who was aged 26 years at the time of her death, and applying 18 multiplier, I assess the dependency at Rs. 2,59,200/-. That apart, I award Rs. 7,500/- each towards loss of estate and loss of love and affection of the child and Rs. 2,000/- towards funeral expenses. Thus, the total amount of compensation comes to Rs. 2,76,200/-.

7. Counsel for the appellant submits that the rate of interest fixed by the Tribunal is at a higher side. The Tribunal has directed that the amount of compensation shall carry interest '' 12% per annum, which, in my view, is at a higher side, and so I reduce the same to 9% per annum.

The appellant is, therefore, directed to deposit the amount of compensation along with interest '' 9% per annum from the date of claim within a period of six weeks. The deposit shall be made in this Court.It is stated that the statutory deposit of Rs. 25,000/-, which was deposited in this Court and invested in F.D.R., has already been released and withdrawn along with the interest accrued thereon in terms of the order passed by this Court on 11.9.2003 in Misc.Case No. 539 of 2003.

It goes without saying that the insurer while depositing the amount of compensation awarded above shall also pay interest on the statutory deposit from the date of application till its deposit before this Court.

Out of the amount of compensation, 85% shall be kept in a fixed deposit account in the name of minor respondent No. 1-Rahil Jacob, in a nationalized bank for a period of ten years and the balance 15% shall be released in favour of claimant-respondent No. 1 through her adoptive mother, namely, Prativa David, in shape of an account payee cheque on proper application and identification.

8. The misc. appeal is accordingly allowed in part. There shall be no order as to cost.

