

(2007) 07 OHC CK 0067
In the Orissa High Court
Case No : M.A.C.A. No. 847 of 2006

Oriental Insurance Company Ltd.

APPELLANT

Vs

Rushi Pradhan and Others

RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2007) CLT 124 Supp

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

Bench : Single Bench

Judgement

A.S. Naidu, J.—A common Award passed on 25th April, 2006 by the Addl. District Judge-cum-Member, III MACT, Parlakhemundi in eight motor accident claim cases, i.e. MAC Nos. 85 of 2002 / 899 of 2001(GDC), 84 of 2002 / 900 of 2001 (GDC), 71 of 2002 / 903 of 2001 (GDC), 88 of 2002 / 895 of 2001 (GDC), 83 of 2002 / 901 of 2001 (GDC), 70 of 2002 / 902 of 2001 (GDC), 86 of 2002 / 898 of 2001 (GDC) and 87 of 2002 / 897 of 2001 (GDC) is assailed in these appeals filed u/s 173 of the Motor Vehicles Act by the Oriental Insurance Company.

2. All the cases having arisen out of the same accident, with consent of Learned Counsel for the parties the matters were heard together.

3. On 19-2-1999 a mini-bus bearing registration number OR-07-C-7173 being driven in a rash and negligent manner and the driver having lost his control collided with a truck bearing registration number OR-05-B-3785 which was coming from the opposite direction. As a result, the passengers of that mini-bus sustained grievous injuries and some succumbed to the injuries in spite of medical care and treatment.

4. One Bhagaban Pradhan who was a passenger in the said mini-bus died in the aforesaid accident. His old dependent father had filed MAC No. 87 of 2002/MAC 397 of 2001 (GDC) claiming a compensation of Rs. 1,50,000.00 with the averments that his son was a "Tailor" by profession and was earning Rs.

4,000.00.

5. One Natabar Pradhan who was a passenger in the same mini-bus who, due to the accident, had sustained multiple injuries including fracture of his left fibula stating that in spite of his undergoing medical treatment for three months he became partially disabled and unable to serve as an agricultural labourer which he was doing prior to the accident filed MAC No. 85 of 2002 / 899 of 2001 (GDC) claiming a compensation of Rs. 50,000.00.

6. One Rushi Pradhan, S/o Chittaranjan Pradhan another passenger in the mini-bus who sustained injuries had filed MAC No. 70 of 2002/902 of 2001 (GDC) stating to have sustained injuries in the said accident and claiming a compensation of Rs. 1,00,000.00.

7. MAC No. 83 of 2002 / 901 of 2001 (GDC) was filed by the father of a minor son stating that his minor son had sustained injuries and had undergone treatment at the Capital Hospital, Bhubaneswar. He claimed a compensation of Rs. 50,000.00.

8. Similarly one Harihar Pradhan stating that he was a passenger in the said mini-bus, sustained injuries in the accident and had to undergo medical treatment filed MAC No. 88 of 2002 / 895 of 2001 (GDC) claiming a compensation of Rs. 20,000.00.

9. The mother of a minor boy who sustained grievous injuries in the accident and had to undergo treatment at the Capital Hospital, Bhubaneswar and MK.CG Medical College-Hospital, Berhampur had filed MAC No. 71 of 2002 claiming a compensation of Rs. 50,000.00.

10. MAC No. 84 of 2002 was filed by another passenger who stated to have sustained injuries and had to undergo treatment at the Capital Hospital, Bhubaneswar and Bomkic PHC, claiming a compensation of Rs. 50,000.00.

11. In MAC No. 86 of 2002 was filed by another stating that he was as a passenger in the aforesaid mini-bus he sustained grievous injuries in the accident and claiming a compensation of Rs. 20,000.00.

12. Before the Tribunal the owner of the offending mini-bus did not appear to contest the cases and accordingly she was set ex parte.

13. The present Appellant Oriental Insurance Company filed its written statements in all the cases taking the stand that the quantum of compensation claimed in each case was high and excessive and putting the respective claimants to strict proof of their contentions.

14. On the basis of the pleadings of the parties, the Tribunal framed four issues to decide the cases. The claimants adduced oral and documentary evidence while the Appellant-Insurance Company neither got any witness examined nor did exhibit any document in support of its case.

15. The Tribunal, after discussing the oral and documentary evidence in extenso came to the conclusion that the driver of the aforesaid mini-bus was responsible for the accident resulting in death and/or grievous injuries to the passengers. Considering the age and/or income deceased/injured the Tribunal awarded the following compensation in favour of the claimants:

(1) MAC No. 87/02 (Death) - Rs. 1,60,000.00

(2) MAC No. 86/02 - Rs. 50,000.00

(3) MAC No. 70/02 - Rs. 50,000.00

(4) MAC No. 83/02 - Rs. 30,000.00

(5) MAC No. 88/02 - Rs. 20,000.00

(6) MAC No. 71/02 - Rs. 30,000.00

(7) MAC No. 84/02 - Rs. 50,000.00

(8) MAC No. 85/02 - Rs. 20,000.00

16. The Tribunal also directed in all the cases that the claimants would be entitled to interest thereon at the rate of 6% per annum from the date of filing of the claim cases till realization directing the Appellant Insurance Company to pay the same within two months from the date of the Award, failing which the said amount shall carry interest at the rate of 9% per annum.

17. Learned Counsel for the Appellant-Insurance Company assails the Award of the Tribunal mainly on the ground that the Tribunal did not properly appreciate the evidence; that the nature of injuries sustained by the injured/deceased having not been proved nor any document having been filed to prove the medical expenditure incurred and the respective treating physicians having not been examined as witnesses in the case, the claims for compensation ought to have been dismissed; that the Tribunal awarded the compensation indiscriminately without any nexus with the injuries stated to have been sustained as well as the expenditures incurred for treatment; and that the award of penal interest was not justified.

18. The submissions of the Learned Counsel for the Appellant Insurance Company are strongly repudiated by the Learned Counsel for the claimant-Respondents. He submitted that compensation has been rightly awarded by the Tribunal in consonance with law after assessing the oral and documentary evidence in the respective cases and the impugned Award does not call for any interference by this Court.

19. Heard the Learned Counsel for the parties at length and perused the materials on record. The oral evidence adduced by the respective claimants clearly reveals that the accident in question occurred due to rash and negligent driving of the driver of the offending mini-bus. The eye-witnesses who were examined as witnesses on behalf of the claimants gave vivid description of the

accident. The discharge certificates and prescriptions with regard to treatment/ medical attendance of the Capital Hospital, Bhubaneswar; MK.CG Medical-College Hospital, Berhampur and Bomkic PHC besides the oral evidence clearly establish the fact of accident and the death/injury of the passengers of the mini bus. The FIR -Ext. 2, inquest report, other police papers and the records of the G.R. Case establish that the accident had occurred due to rash and negligent driving of the mini-bus in question. Thus the finding of the Learned Tribunal with regard to injuries, the" medical treatment and the entitlement of the claimants to receive compensation for that needs no interference.

20. The only other question that needs consideration is as to whether the amounts of compensation awarded are just and proper. While according to Learned Counsel for the Appellant-Insurance Company the amounts of compensation are high and excessive, according to the Learned Counsel for the claimant-Respondents the same are just and proper.

21. Law is well settled that compensation cannot be awarded as a bonanza. The same should always be just and proper. Re-assessing the evidence, more particularly the injury reports of all the injured persons, the prescriptions, other medical documents, etc. which are on record keeping the aforesaid principle in view, this Court feels that the following amounts would "be just and proper compensation in favour of each of the claimant in the respective cases.

22. In MACA No. 855/06 corresponding to MAC No. 87/02, it appears that the deceased was a bachelor. The age of the claimant father was 60 years. There is no documentary evidence with regard to income of the deceased. No rebuttal evidence has been adduced by the Insurance Company either oral or documentary. In view of the aforesaid fact, this Court holds that an amount of Rs. 1,00,000.00 (one lakh) instead of Rs. 1,60,000.00 as awarded by the Tribunal will be just and proper and modifies the award accordingly.

23. So far as other cases are concerned which were injury cases, after perusing the injury reports, prescriptions, bed-head tickets of the hospitals, vis-a-vis oral evidence, and considering the nature of injuries and pain/suffering in each case, this Court feels that the following amounts would be just and proper compensation in favour of the respective claimants:

MACA No. 847/06 corresponding to MAC No. 70/02 - Rs. 25,000.00 instead of Rs. 50,000.00.

MACA No. 848/06 corresponding to MAC No. 86/02 - Rs. 25,000.00 instead of Rs. 50,000.

MACA No. 849/06 corresponding to MAC No. 88/02 - Rs. 15,000.00 instead of Rs. 20,000.

MACA No. 851/06 corresponding to MAC No. 84/02 - Rs. 25,000.00 instead of Rs. 50,000.00.

MACA No. 852/06 corresponding to MAC No. 70/02 - Rs. 25,000.00 instead of Rs. 50,000.00.

MACA No. 853/06 corresponding to MAC No. 83/02 - Rs. 20,000.00 instead of Rs. 30,000.00.

24. However, after perusing the respective injury reports, medical evidence this Court is not inclined to interfere with award of compensation of Rs. 20,000.00 passed in MAC No. 85 of 2002 corresponding to MACA No. 850/06, which is just and proper.

25. This Court directs that the claimants shall also be entitled to interest on the compensations amounts at the rate of 6% per annum from the date of filing of the claim petitions till realization. This Court sets aside the direction of the Tribunal as to penal interest at the rate of 9% on the compensation amounts.

26. The respective amounts of compensation with interest as per this judgment shall be deposited by the Appellant-Insurance Company before the Tribunal within six weeks of communication of the judgment which shall be disbursed proportionately apportioning the same as per the stipulations in the A Ward of the Tribunal.

27. With the aforesaid direction this Court disposes of all the aforesaid MACAs.

28. The amounts deposited by the Appellant before this Court in the respective appeals be returned to the Appellant along with the interest accrued thereon on proper application.