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**(2000) 03 OHC CK 0058**  
**In the Orissa High Court**  
**Case No : M.A. No. 760 of 1999**

Powmex Steel Ltd.

APPELLANT

Vs

Gopal Krishna Chand and Others

RESPONDENT

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**Date of Decision :** 31-03-2000

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149, 173, 174

**Citation :** (2000) 2 ACC 553 : (2001) ACJ 1942 : (2000) 89 CLT 813

**Hon'ble Judges :** P.K. Misra, J

**Bench :** Single Bench

**Advocate :** N.C. Pati and A.K. Mohapatra, for the Appellant; Upendra Kumar Samal and B.R. Barik, for the Respondent

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## Judgement

P.K. Misra, J.—This appeal has been filed by the owner u/s 173 of the Motor Vehicles Act, challenging the award of the Claims Tribunal directing payment of Rs. 1,00,000 as compensation to the claimant-respondent Nos. 1 and 2.

A cross-objection has been filed by the claimants claiming higher compensation.

2. The accident occurred on 9.4.1996. The claimants are the parents of deceased Byomakesh who was a student of Plus II. The Claims Tribunal has found that the accident occurred due to negligent driving of the vehicle belonging to the present appellant.

3. Though the learned counsel appearing for the appellant has challenged the finding regarding negligence of the driver of the vehicle, on a careful perusal of the judgment of the Tribunal as well as materials on record, such contention cannot be accepted. The finding is based on discussion of relevant materials on record. Moreover, the driver of the offending vehicle having not been examined, adverse inference is to be drawn against the owner/insurance company.

4. The next question relates to the quantum of compensation payable. Even though the appellant has challenged the quantum payable, it is apparent that a sum of Rs. 1,00,000 paid to the parents for the death of their son who was

reading in Plus II appears to be on the lower side. The claimants had relied upon the decisions U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, ; Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another, ; Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, and Shanti Bai and Others Vs. Charan Singh and Others, . Though the Claims Tribunal noticed the aforesaid decisions, it negated the contention of the claimants for payment of higher compensation by observing in rather cavalier manner:

...No one can foretell the future of a young boy if in future he would be Sraban Kumar or Ajat Satru. So in absence of any prescribed norm to calculate notional income of the deceased and quantum of compensation in the circumstances it would be just and proper to grant compensation of Rs. 1,00,000 (one lakh)...

There is no dispute that the father of the deceased was a Reader in a college and the deceased was studying in Plus II. In normal course, therefore, one would have expected that the deceased would have completed his studies and would have been gainfully employed. The observation of the Claims Tribunal that the deceased could have become "Ajat Satru" (who had killed his father) appears to be rather cynical. It is true that in such matters it will be difficult for any court to come to any conclusion about future contingencies. However, awards given in different cases under similar circumstances are always considered as guideline. Having regard to the facts and circumstances of the case and the various decisions cited by the claimants, a sum of Rs. 1,50,000 can be assessed as reasonable compensation.

5. The next question relates to inter se liability of the owner vis-a-vis that of the insurance company. The Claims Tribunal saddled the liability on the owner on the ground that the driver of the vehicle did not have valid driving licence to drive the particular vehicle in question. The learned counsel appearing for the appellant has submitted that no specific issue had been framed on this aspect and as such prejudice has been caused. On going through the judgment I find that appropriate issue has not been framed and adequate material have not been brought on record. Even though the person driving had only a learner's licence, question may crop up whether he was driving the vehicle in presence of any other having valid driving licence. Interest of justice requires that the question relating to inter se liability of the owner vis-a-vis that of the insurance company should be re-determined by framing appropriate issue on this aspect and by giving further opportunity of hearing to the parties concerned.

6. The learned counsel appearing for the claimants respondents submitted that the question of inter se liability of the owner vis-a-vis that of the insurance company is a matter between them and the payment of compensation should not be delayed on that account, keeping in view the principle laid down in Section 149(4) of the Motor Vehicles Act, 1988. The provision contained in Section 149(4) has been interpreted by this court in United India Insurance Co. Ltd. v. Kashinath Barik, Misc. Appeal No. 694 of 1997; disposed of on 26.6.1999. The

plea taken by the insurance company relates to question of breach of the policy on the ground of absence of valid driving licence. As such, the provision contained in Section 149(4) is squarely applicable. In such view of the matter, it is directed that the compensation amount as now determined should be paid by the insurance company to the claimants and if it is ultimately found that the insurance company is not liable, necessary direction can be given by Claims Tribunal for reimbursement of the amount paid.

7. It appears that a sum of Rs. 25,000 has been deposited in this court by the owner which has been invested in a fixed deposit. The said amount along with accrued interest shall be transmitted to the Claims Tribunal for disbursement to the claimants. The insurance company is directed to deposit the further amount of Rs. 1,25,000 along with interest. Interest should be calculated on sum of Rs. 1,50,000 at the rate of 10 per cent from the date of the application till september, 1999, when a sum of Rs. 25,000 had been deposited by the owner in this court. Thereafter the interest should be calculated on sum of Rs. 1,25,000 from 1.10.1999 till the date of deposit. The entire amount as directed above should be deposited by the insurance company before the Claims Tribunal on or before 30.6.2000, failing which the balance principal amount shall become payable with 12 per cent interest there after. It is made clear that if it is ultimately found that the insurance company is not liable, direction shall be issued by the Claims Tribunal to the owner to reimburse the entire amount paid by the insurance company. Similarly, if it is ultimately found that the insurance company is liable and not the owner, direction shall be issued to the insurance company to reimburse the sum of Rs. 25,000 along with the accrued interest as per the fixed deposit. It is made further clear that any direction regarding reimbursement either by the owner or by the insurance company, as the case may be, can be enforced by invoking the provisions contained in Section 174 of the Motor Vehicles Act, 1988. The parties are directed to appear before the Additional District Judge, Titilagarh, on 5.7.2000. Thereafter, the question regarding inter se liability of the owner vis-a-vis that of the insurance company shall be determined within a period of six months by giving opportunity to the parties concerned. The claimants need not participate at such enquiry.

8. In the result, the cross-objection is allowed to the extent indicated and the Misc. Appeal is disposed of subject to directions given above. There will be no order as to costs.