

(2019) 01 OHC CK 0045

In the Orissa High Court

Case No : MACA No.964 Of 2014 & Motor Accident Appeal No. 964 Of 2014

Prafulla Kumar Mishra

APPELLANT

Vs

Indrasen Sharma And Another

RESPONDENT

Date of Decision : 04-01-2019

Acts Referred:

Motor Vehicle Act, 1988 — Section 166

Citation : (2019) 127 CLT 811

Hon'ble Judges : A.K. Rath, J

Bench : Single Bench

Advocate : Deepali Mohapatra, Saumendra Kumar Ghose

Final Decision : Disposed Of

Judgement

A.K. Rath, J

1. This appeal challenges the award dated 19.6.2014 passed by the learned 2nd M.A.C.T., (S.D), Berhampur, Ganjam in M.A.C. No. 30/2005

(512/2004-GDC), whereby the learned Tribunal dismissed the claim application.

2. The appellant as claimant filed an application under Section 166 of the Motor Vehicles Act, 1988 for compensation before the learned Tribunal. The

case of the claimant was that he was working in the Sambad Office, Berhampur. On 11.11.2002 at 3.30 A.M. he was carrying the daily Sambad

copies to Berhampur bus-stand in an auto-rickshaw bearing Registration No. OAG 3298. He was driving the vehicle. There was dense fog. On the

way near Ankuli bypass the auto-rickshaw dashed against the back side of a truck parked on the left earthen flank of the road without lightening any

indicator or glowing sign, as a result of which, he sustained injuries. He was shifted to M.K.C.G. Medical College and Hospital, Berhampur for

treatment and subsequently referred to S.C.B. Medical College and Hospital, Cuttack. He was treated as an indoor patient till 6.12.2002. The matter was reported to the police station.

3. The owner as well as the insurer of the offending truck entered appearance and filed written statement denying the assertions made in the petition.

4. To substantiate the case, the claimant had examined two witnesses including himself and seven documents had been exhibited on his behalf. No

evidence was adduced by the opposite parties. Learned Tribunal came to hold that charge sheet was submitted against the claimant that he was

driving the auto-rickshaw in a rash and negligent manner. He sustained injuries. Held so, it dismissed the case and passed nil award.

5. Heard Ms. Deepali Mohapatra, learned Advocate for the appellant and Mr. Saumendra Kumar Ghose, learned Advocate for respondent no. 2.

6. Criticizing the award, Ms. Mohapatra, learned Advocate for the appellant submits that charge sheet is not a sacrosanct piece of evidence. Learned

Tribunal committed a manifest illegality in discarding the testimony of the witnesses examined by the claimant. To buttress the submission, she places

reliance on a decision of this Court in the case of Mataji Bewa v. Hemanta Kumar Jena, 1994 ACJ 1303.

7. Per contra, Mr. Ghosh, learned Advocate for the Insurer submits that the claimant was driving the auto-rickshaw in a rash and negligent manner.

He sustained injuries. The accident took place due to fault of the claimant. Rightly the learned Tribunal has passed the nil award.

8. In Mataji Bewa, placing reliance on the charge sheet, the Tribunal came to hold that the deceased was a passenger in the truck which was involved

in the accident. The said truck was being driven rashly and negligently by the driver. Held so, it exonerated the insurer from its liability. The matter

came to this Court. This Court held that the contents of the charge sheet cannot possibly be treated as an evidence in the claim proceedings. The

Tribunal obviously committed gross error of law in relying upon the charge sheet to come to the conclusion that the deceased was travelling on the

truck as a passenger, though the positive evidence of the claimants that the deceased was a pedestrian and the truck came and knocked him down

had not been impeached in any manner by way of cross-examination. There was no justification on the part of the Tribunal to ignore that evidence of

the claimants. The finding of the Tribunal on that score was set aside. It was held that the deceased was a pedestrian. The matter was remitted back to the learned Tribunal.

9. The ratio in Mataji Bewa proprio vigore applies to the facts of this case as well.

10. Resultantly, the impugned award of the learned Tribunal is set aside. The matter is remitted back to the learned Tribunal for de novo trial. In order

to avoid further delay, the parties shall appear before the learned Tribunal on 8th February, 2019 on which date the learned Tribunal shall fix a date of

hearing and conclude the hearing of the case by end of April, 2019. It is open to the parties to adduce further evidence.

11. The appeal is accordingly disposed of. No costs.