

**(1988) 04 OHC CK 0014**

**In the Orissa High Court**

Prakash Rochan Nayak

APPELLANT

Vs

General Manager, Orissa State Road Transport Corporation

RESPONDENT

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**Date of Decision :** 15-04-1988

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 110D, 92A

**Citation :** (1988) 2 ACC 549

**Hon'ble Judges :** S.C. Mohapatra, J

**Bench :** Single Bench

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## **Judgement**

S.C. Mohapatra, J.—Claimant is the appellant u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act").

2. It is undisputed that on 5-12-1981, the Public Bus bearing Registration No. OSO 5176, was moving from Rourkela to Kayangola. Deceased father of the appellant who was a Lascar in 9th Orissa Battalion, National Cadet Corps, Rourkela was a passenger in the bus. When at about 10.30 P.M. near the check-gate at Barbil, the driver of the bus PW 2, swerved it to the left to avoid head on collision with a truck coming from the front, the bus ran over some heaps of metal stacked on both sides of the road. As a result, the bus jerked and six passengers sustained injuries. Deceased sustained head injuries for which he was removed to Sriram Chandra Bhanj Medical College Hospital at Cuttack where he succumbed on 7-12-1981, at about 4.45 P.M.

3. Mother of the deceased and the appellant who was minor son of the deceased aged about 2 years at the time of accident made a claim for compensation of Rs. 1,10,000/- against the owner of the vehicle i.e. Orissa State Road Transport Corporation, alleging that the deceased was getting about Rs. 400/- towards pay and other emoluments, out of which he was contributing Rs. 300/- per month for the dependents. As the deceased was aged about 42 years, it was claimed that he would have served for another 16 years, till his retirement, and he would have contributed the amount claimed to the claimants.

4. The conductor and the driver of the bus has been examined as PWs 1 and DW 1 respectively. A copy of the First Information Report lodged immediately after the occurrence in the Barbil Police-station has been produced and the certificate granted by the Administrative Officer of the 9th Orissa Battalion, National Cadet Corps, Rourkela indicating the period for which the deceased would have served and the pay he was getting at the time of his death were filed in support of the claim.

5. During pendency of the claim applications before the Tribunal mother of the deceased expired leaving the appellant alone or the legal heir and dependant who was represented by his paternal uncle. The Tribunal come to the conclusion that the bus was not in speed since it was going upgradient. Since the occurrence took place in the night and the deceased was probably dozing by resting his head on the seat in front of him, he sustained the injury on account of jerking and as such, the driver was not negligent in driving the bus. Accordingly, the Tribunal awarded a compensation of Rs. 15,000/- only u/s 92-A of the Motor Vehicles Act. Aggrieved by the aforesaid order, this appeal has been filed.

6. Two questions arise for consideration in this case.

(i) Whether there was negligence in driving the bus ; and

(ii) What would be the just compensation payable to the claimant ?

7. Question No. (1) : From the statement of the driver; it is clear that the road at the spot of the accident was about 12 to 14 feet wide and on both sides of the road, for about 2 K. Ms. metals were stacked in heaps which were not arranged. The bus was moving upgradient at a speed of 30 K. Ms. per hour. While driving the bus, he saw two trucks coming from his front. He saw the truck from a distance of 200 to 250 feet when the range of the head light of the truck was short but from a distance between 50-101 feet to approach the light switch was turned for long range head light. This affected the vision of the driver who could not see the road clearly. To avoid imminent head on collision he swerved the bus to the left which went over the metal stack and jerked. As a result of such jerking, six persons were injured and the deceased succumbed to the injury. The conductor also gave the same story and added that the road was a single vehicle road and was straight in that zone. He stated that the vehicle ran over 2 to 3 stacks of metals.

8. Mr. S. Mohapatra the learned Counsel for the appellant submitted that the facts and circumstances as narrated by the witnesses make it clear that the driver did not take much care which was necessary and as such an inference of negligence in driving can be attributed to him. The story of dozing and resting of the head on the back rest of the seat in front of the deceased as surmised by the Tribunal is not supported by materials and would not be supported by materials and would not come within a reasonable guess work. He relied upon the decision of this Court *Prafulla Chandra Mohanty v. Vast. Dei and Ors.* 1981 TAC 169. In this reported decision, a bus was proceeding forward and when suddenly another bus

came from the reverse direction at a great speed, the driver swerved the vehicle to his left side with a view to Saving the vehicle and its passengers from disaster, as a result of which, the vehicle skidded to the extreme left, causing injuries to the passengers. In such circumstances, it was held:

It is the admitted case of the parties that when brake was applied, the vehicle skidded out of the road. The memorandum of local inspection prepared by the Tribunal indicates that the bend was sudden and any on-coming vehicle would not be seen at the spot of accident. When the ill-fated bus was being driven on such a road where the vision was limited on account of the bend, the driver in charge of so many precious human lives in his vehicle should have been extra cautious. "Expect the unexpected" should have been his motto and he should have been apprehensive of the approach of a vehicle from the opposite direction. The care expected of a quick running vehicle is commensurate with the situation and condition of the road and where the road was bad, narrow, crowded or the like, the care expected from the driver became grantor....

9. The principle in this decision would be directly applicable. When the driver had knowledge that the road was narrow having metals stacked on both sides, it ought to have taken care to drive the bus with precious human lives inside. As a prudent and experienced driver he ought to have expected the unexpected. He saw two trucks coming from the front. He ought to have stopped the bus and should not have taken decision to move at a speed of 30 kilometers in the upgradient in a bad road.

10. From the aforesaid discussion, I have no doubt in my mind that the driver OPW 1 was negligent in driving the vehicle, as a result of which, the life of the deceased was lost. The cause of injury to the deceased not being supported by evidence is not acceptable

11. The decision cited by Mr. Sinha have not been rendered in the circumstances as in this case and require no consideration not being applicable.

12. Question No. (ii) : On the materials available, it is clear that the deceased was about 42 years on the date of accident. He was to serve for 17 years more and the dependency of the appellant would have continued in the minimum for 16 years as claimed in the application u/s 110-A of the Act. Deceased was drawing a pay of Rs. 393.80 paise. It is claimed that he was contributing Rs. 300/- per month for which there is no material. The deceased belongs to a village in Dhamnagar Police-station in Balasore district and was serving at Rourkela which is a steel township. It is hard to accept that the deceased was able to have even two square meals a day with Rs. 93.80 paise to contribute Rs. 300/-. Even taking at the rate of expenses at Rs. 5/- a day, the deceased must have been spending Rs. 150/- and would be contributing in the average Rs. 250/-. In the circumstances without materials, a reasonable guess work that the deceased was contributing Rs. 200/- per month would be reasonable. The annual loss of dependency would thus be Rs. 2,400/-.

13. Short term investments in Banks for three years yield interest at 10%. Thus from a sum of Rs. 24,000/- the loss of dependency at Rs. 200/- per month can be compensated. However, my assessment being reasonable guess work the compensation to be just as determined at Rs. 25,000/-. The amount of Rs. 15,000/- awarded u/s 92-A is to be adjusted if already paid. In case the amount has not yet been paid by the owner and the object of Section 92-A is defeated, the entire compensation of Rs. 25,000/- shall be deposited within two months with interest at the rate of 10% per annum from the date of application till the date of deposit. In case the amount is not deposited within two months, the owner shall be liable to pay interest at 12-1/2% per annum from the date of application till deposit or realisation.

14. Appellant is a minor. He has no natural guardian. The paternal uncle without being appointed by a Court of competent jurisdiction cannot act as guardian to deal with the compensation which is not coparcenary property. The Act does not make any provision to meet such contingency. No amount can thus, be paid to the paternal uncle on behalf of the minor. The Tribunal, thus, becomes the custodian since certificate u/s 110-E is to be issued by him to the Certificate Court for realisation of the amount if not deposited within a reasonable time. Tribunal ought to move the competent court for appointment of guardian. Till then, the amount shall be invested by it in fixed deposit to earn annual interest at 10% in the minimum on account of the minor. I cannot be bind that the paternal uncle must have spent amounts for the welfare of the child. He is entitled to reimbursement if the minor has no other coparcenary property. The paternal uncle may also move the Court of competent jurisdiction for appointment of a guardian to deal with the person and property of the minor.

15. In the result the appeal is allowed in part. The respondent is directed to deposit a compensation of Rs. 25,000/- with interest @ 10% per annum from the date of application till the date of deposit if made within two months from today in the Tribunal adjusting any amount already paid or deposited. On failure to deposit the amount within the time stipulated, the compensation shall carry the interest of Rs. 12-1/2% per annum from the date of application till the date of deposit. The claimant is entitled to the costs throughout. Fee payable on the application shall be realised from out of the costs and Tribunal shall take steps to realise the same from the owner respondent with compensation and interest as decided.