
(1990) 11 OHC CK 0006
In the Orissa High Court
Case No : Misc. Appeal No. 288 of 1984

Raghunath Kar and Another	Vs	APPELLANT
Shasikala Devi and Another		RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 92

Citation : (1991) 1 ACC 607 : (1991) ACJ 347 : (1991) 71 CLT 86

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : R.N. Mohanty, for the Appellant; A.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.

1.This is an appeal u/s 110-D of the Motor Vehicles Act (hereinafter referred to as "the Act") by the claimants whose application for compensation has been rejected by the Motor Accidents Claims Tribunal.

2. The applicants filed a claim petition u/s 110-A of the Act claiming compensation to the tune of Rs. 20,000/-alleging that their daughter Soshia Dei, aged 13 years while moving on the left side of the road near village Laxminarayanpur on the Express Highway was killed by the collision of the truck ORU 668 which was being driven rashly and negligently. It is alleged that the truck knocked down the deceased and left the place at a great speed. According to the claimants the girl was earning Rs. 200/- per month by selling snacks and the said income was supplementing the income of the family.

3. The owner of the vehicle did not appear before the Tribunal, but the insurance company appeared and contested. The stand of the company before the Tribunal was a denial of the allegations made in the claim petition.

4. The Tribunal framed 4 issues and on issue No. 2 which is the most important

issue as to whether the accident was caused due to rash and negligent driving of the vehicle ORU 668, the Tribunal came to hold that no conclusion could be drawn that the girl had died as a result of collision with the vehicle ORU 668 and that the driver of the vehicle was responsible for her death. On issue No. 3, which was with regard to the quantum of compensation, the Tribunal held that the claimants would be entitled to Rs. 8,000/-, but in view of the conclusion on issue No. 2, the application was rejected and hence the present appeal.

5. Mr R.N. Mohanty, the learned counsel for the appellants, contends that in view of the positive evidence of the sole eye-witness to the occurrence, namely, PW 1, the learned Tribunal committed an error in holding that the claimants failed to establish with regard to the rashness and negligence on the part of the driver of the vehicle ORU 668. He further contends that the evidence of PW 2 being merely a hearsay can be ignored and the evidence of PW 1 who is an eye-witness should be accepted, for holding the negligence and rashness of the driver of the vehicle which knocked down the deceased on the fateful day. Mr. Mohanty also further urges that merely because the claimants did not take steps for calling for the police papers, the oral evidence with regard to the accident cannot be thrown out.

Mr. A.K. Mohanty, the learned counsel for the insurance company (respondent No. 2), on the other hand, contends that the evidence of PW 2 being diagonally opposite to the evidence of PW 1 with regard to the manner of accident and PW 2 having stated that he heard about the occurrence from PW 1 almost contemporaneously, the Tribunal was fully justified in rejecting the entire case and, therefore, this court should not interfere with the said conclusion.

6. I have carefully examined the evidence of PWs 1 and 2. In my considered opinion, the Tribunal erred in law in rejecting the evidence of PW 1 on the ground that the hearsay evidence of PW 2 runs contrary to the same. PW 1 is an eye-witness to the occurrence and he has categorically stated that while the girl was standing on the earthen flank of the Express Highway facing towards Daitary side, the truck ORU 668 coming from Daitary side knocked her down and the right side end of the front bumper of the truck had hit the girl and had thrown her out. Nothing has been elicited in the cross-examination of this witness to discard his evidence. No doubt, PW 2 has narrated the incident in a slightly different manner, inasmuch as according to him while the girl was on the middle of the road and was crossing the road from the left to right, the truck knocked her down and according to him this information he got from PW 1. But the evidence of PW 2 is merely hearsay. He has not seen any part of the occurrence. There is no written document of PW 1 that he has stated in the manner deposed to by PW 2. In that view of the matter, it would not be proper to discard the direct evidence of PW 1. On the other hand, the evidence of PW 2 can be safely rejected which is nothing but hearsay. There is no reason why PW 1 should try to support the claimants. At least nothing has been elicited in his evidence. That apart, it is not the case of the insurance company that no accident at all took

place nor the deceased never died. In that view of the matter relying on the evidence of PW 1 disagreeing with the learned Tribunal, I would hold that the claimants have been able to establish the fact that the deceased died as the offending vehicle knocked her down while she was still standing on the left flank of the earthen road of the Express Highway and, therefore, it must be further held that the driver of the offending vehicle was rash and negligent and on account of such rashness and negligence, the accident occurred and the deceased died. Consequently, the claimants should be entitled to some compensation.

7. So far as the quantum of compensation is concerned, the Tribunal has come to a conclusion that the proper compensation would be Rs. 8,000/-. Mr. Mohanty appearing for the appellants contends that u/s 92-A of the Act, the minimum compensation payable is Rs. 15,000/- and, therefore, at least that amount of compensation should be awarded. He further contends that even if Section 92-A came into the statute book subsequent to the date of accident, but that would indicate the legislative intent that in case of death by road accident by motor vehicle, the minimum compensation should be Rs. 15,000/-. Mr. Mohanty also relies upon a decision of the Andhra Pradesh High Court in the case of T. Srinivasulu Reddy Vs. C. Govardana Naidu and another, wherein their Lordships of the Andhra Pradesh High Court have held that Section 92-A is applicable to pending proceedings in respect of accidents which occurred prior to the date when the provision came into force. Mr. A.K. Mohanty, the learned counsel appearing for the insurance company, respondent No. 2, on the other hand, strenuously argues that Section 92-A having come into the statute book subsequent to the date of accident in the present case and the language of the said provision not being retrospective, the said provision cannot be made applicable. Whether the provision of Section 92-A would apply to a case of accident that occurred prior to the coming into force of the said provision, or not, the fact that the legislature has brought that provision into the statute book would indicate the legislative intent. The provision is a beneficial provision and there is no reason as to why the said provision should not apply in awarding compensation. Even otherwise, on the materials on record, the amount of compensation determined by the Tribunal appears to be low. The girl was supposed to have been earning Rs. 200/- per month by selling bara and that was supplementing the family income. In the premises, as aforesaid, I am of the considered opinion that the reasonable compensation would be Rs. 15,000/- and I accordingly direct that the appellants are entitled to the compensation to the tune of Rs. 15,000/- (Fifteen thousand). The said amount of compensation should carry interest at the rate of six per cent per annum from the date of this judgment till the date of actual payment. The judgment of the Tribunal is accordingly set aside and this appeal is allowed. There will, however, be no order as to costs.