

(2007) 06 OHC CK 0080

In the Orissa High Court

Case No : M.A.C.A. No's. 1021 of 2006 and 93 of 2007

Shantilata Sarangi and Others

APPELLANT

Vs

D.M., New India Assurance Co. Ltd. and Another

D.M., New India Assurance Co. Ltd. Vs Shantilata Sarangi and
Others

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170, 173

Citation : (2007) CLT 1023 (Suppl CrI) : (2007) 1 OLR 1019 Supp : (2007) OLR 1023 (Suppl CrI)

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

Bench : Single Bench

Advocate : T.C. Mohanty and Associates in in M.A.C.A. No. 1021 of 2006 and G.P. Dutta and Associates in M.A.C.A. No. 93 of 2007, for the Appellant; G.P. Dutta and Associates for Respondent No. 1 in M.A.C.A. No. 1021 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The Award dated 28th October, 2006 passed by the 1st Addl. District Judge-cum-1st Motor Accident Claims Tribunal, Cuttack in Misc. Case No. 862 of 2003 is assailed u/s 173 of the Motor Vehicles Act, 1988 in M.A.C.A. No. 1021 of 2006 by Mrs. Shantilata Sarangi and Ors. , the legal representatives of one Durbadala Sarangi on the ground that the compensation directed to be paid to them is inadequate, very low and needs to be enhanced. The same Award is also assailed by M/s. New India Assurance Company u/s 173 of the Motor Vehicles Act in M.A.C.A. No. 93 of 2007 with a prayer to set aside the same on the ground that the amount awarded is excessive and the Tribunal has not taken into consideration all the aspects of the case. Both the appeals arise out of the same Award and as the facts and points of law involved in both are same, and therefore were heard analogously.

2. On 10/11.6.2003, Durbadala while returning from Cuttack to Tangi on a

scooter bearing registration number OR-05L- 5821, it was alleged that a tanker, bearing registration number OR-15-C-2489, driven in a rash and negligent manner dashed against his scooter. As a result, Durbadala was thrown out on the road and sustained grievous multiple injuries on his person. He was shifted to the SCB Medical-College Hospital, Cuttack immediately but in spite of best efforts his life could not be saved. On the basis of an FIR, a police case was registered and in course of investigation post mortem of the deadbody of Durbadala was conducted. The widow, two sons, a daughter and old parents of Durbadala filed the aforesaid Misc. Case before the Tribunal u/s 166 of the M.V. Act claiming a compensation of Rs. 12,00,000.00 from the owner and/or insurer of the offending tanker.

3. The owner of the offending tanker in spite of receiving notice did not contest the case before the Tribunal and was set ex parte.

M/s. New India Assurance Company filed a written statement vaguely denying the averments of the Petitioners and taking the pleas that the accident having caused due to negligence of both the offending tanker and scooter driven by the deceased; and the driver of the offending tanker having not possessed a valid driving licence at the time of the accident, it is not liable to pay any compensation.

4. On the basis of the pleadings of the parties inter se, the Tribunal framed as many as four issues. To substantiate their case, the Petitioners got two witnesses examined, one of whom was an eye-witness to the accident. Besides, they also exhibited the police papers, certificate as to the last pay received by the deceased and other documents. The Insurance Company on the other hand got one witness examined in order to refute the claim of the Petitioners. A petition was of course filed by it u/s 170 of the M.V. Act which being allowed it was permitted to take wider defence.

5. Relying on the evidence of P.W.2, the inquest report Ext.4, the post mortem report Ext.5, certified copy of the final form submitted by police in the case Ext.6, certified copies of the FIR with regard to the accident and the seizure-lists Exts.1 to 3, the Tribunal arrived at the conclusion that the deceased had met his death in a motor accident caused by the offending tanker due to its rash and negligent driving. It also held that the said offending vehicle had been duly insured, the insurance policy being No. 550200/31/CK/12577 BBSR which was valid till 8.2.2004. Therefore the accident had occurred during validity of that insurance policy. The Tribunal also held that the owner of the offending tanker was liable to pay the compensation and by virtue of the insurance policy its insurer was duty bound to indemnify the owner the said compensation amount. So far as the quantum of compensation was concerned, the Tribunal observed that the deceased was working as a Superintendent, Grade-I in the Orissa High Court and relying on Xerox copy of the voters' identity card, entries on his service book, the post mortem report and oral evidence, it held that the deceased was fifty five years" old on the date of his accidental death. Relying on

the salary certificate of the deceased issued by the Establishment Officer of Orissa High Court which was exhibited in the case, the Tribunal came to the conclusion that the last salary received by the deceased was Rs. 11,925.00 for the month of May, 2003. After deducting 35% from his gross salary towards statutory deductions, the Tribunal held that his monthly income would have been Rs. 7,800.00. Then deducting 1/3rd therefrom towards the self-expenditure of the deceased, it held that the deceased would have been contributing, Rs. 62,400.00 per annum to his family. Considering the age of the deceased and applying "11" multiplier, the Tribunal held that the loss of dependency was Rs. 6,86,000.00 and adding to that a sum of Rs. 14,000.00 towards loss of love and affection, transportation of deadbody, post mortem expenditure and funeral expenses, it awarded a compensation of Rs. 7,00,000.00 (seven lakhs) with interest thereon at the rate of 7% per annum from the date of the claim application, i.e. 31.7.2003 till the date of realization.

6. The Insurance Company assails the aforesaid Award mainly on the ground that the Tribunal acted illegally and with material irregularity in not relying on the documents exhibited on its behalf and holding that the accident had occurred due to contributory negligence. It was submitted that as a detailed salary certificate had not been filed, the conclusion of the Tribunal was based on presumption and was not just and proper. It was further submitted that the driver of the offending tanker was not possessing a valid driving licence at the time of the accident and as such it is not liable to pay any compensation.

7. On the other hand, according to the learned Counsel for the Petitioners, the compensation awarded by the Tribunal has been disproportionately low. The salary certificate filed and marked as exhibit has not been properly considered. He further submitted that the Tribunal erred in assessing the age and income of the deceased and in application of the multiple and the compensation should be suitably enhanced.

8. This Court heard the learned Counsel for the parties at length and perused the materials available.

So far as the submission with regard to contributory negligence is concerned, the Insurance Company got one of its officers examined as O.P.W.1. The said witness did not see the accident. All his statements were based on hearsay. No independent witness was got examined by the Insurance Company to establish the statement made in Ext.A. In absence of examination of the persons who had made the statements or affording opportunity to the claimants to test the veracity of their statements, the facts stated basing on hearsay cannot be accepted. On the other hand, the Petitioners got P.W.2 examined who was an eye-witness to the accident. In his deposition he has clearly narrated the facts. A reading of his deposition reveals that the accident occurred due to rash and negligence of the driver of the offending tanker. The FIR and other police documents corroborate such statement. The Tribunal has considered all the materials in proper perspective and the conclusions arrived at by him do not

suffer from any infirmity, illegality or absurdity. This Court has no hesitation to confirm the findings of the Tribunal with regard to cause of accident and negligence.

The next submission of the learned Counsel for the Insurance Company is with regard to quantum of compensation. Admittedly the deceased was working as a Superintendent, Grade-I in the Orissa High Court. Ext.7 is the salary certificate issued in his favour which clearly reveals that he was receiving a monthly salary of Rs. 11,925.00. Out of that the Tribunal has deducted 35% towards statutory contribution and has held that the income of the deceased was Rs. 7,800.00 per month. Thereafter it deducted 1/3rd of Rs. 7,800.00 towards the personal expenditure of the deceased and found the annual income of the deceased to be Rs. 62,400.00. According to Mr. Dutta, the assessment of income of the deceased has been excessive; while the learned Counsel for the Petitioners submits that the Tribunal acted illegally and with material irregularity in reducing the monthly income of the deceased from Rs. 11,925.00 to Rs. 7,800.00. According to learned Counsel for the Petitioners, the salary certificate issued by the Orissa High Court as per Ext.7 ought to have been accepted in toto and deductions made therefrom were unjust and improper.

9. Fact remains, the salary certificate does not reflect the statutory deductions. This Court does not find any illegality to have been committed by the Tribunal and is therefore not inclined to interfere with the finding of the Tribunal with regard to income of the deceased.

10. With regard to age of the deceased, after perusing the entries in the voters' identity card and service book of the deceased coupled with post mortem report and oral evidence adduced in the case, the Tribunal held that he was fifty-five years' old at the time of the accident. Though the Insurance Company disputed that age, no steps were taken by it to produce any contrary evidence. Even during cross-examination of the witnesses examined for the Petitioners, no such question was put. O.P.W.1 was silent in that regard. This Court therefore finds no reason to interfere with the conclusion of the Tribunal with regard to age of the deceased.

11. The Tribunal has awarded an amount of Rs. 14,000.00 towards loss of love and affection, expenditure towards transportation of the deadbody, post mortem, funeral, etc. According to the learned Counsel for the Petitioners, the said amount is grossly inadequate and may be suitably enhanced. In absence of any cogent evidence in that regard this Court declines to interfere with the said award of the Tribunal.

12. Considering the entire facts and circumstances of the case, this Court finds that compensation of Rs. 7,00,000.00 with 7% interest thereon from the date of filing of the claim petition, i.e. 31.7.2003, is just, proper and in consonance with law. Finding no infirmity or illegality in the impugned Award, this Court declines to interfere with the same, and consequently dismisses both the appeals.