

(1999) 09 OHC CK 0020
In the Orissa High Court
Case No : Misc. Appeal No. 735 of 1994

Shashikala Swain and Others

APPELLANT

Vs

Md. Khairuddin and Another

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 122, 168

Citation : (2001) ACJ 1638 : AIR 2000 Ori 52 : (1999) 88 CLT 681

Hon'ble Judges : R.K. Dash, J

Bench : Single Bench

Advocate : M. Kanungo, B. Dash, R. Singh and S. Satpathy, for the Appellant; P. Roy and S. Roy, for the Respondent

Final Decision : Allowed

Judgement

R.K. Dash, J.—Appellants are wife, daughters, son and parents of the Late Bijoy Bihari Swain (hereinafter referred to as "the deceased") who was the Inspector of Police at the relevant time when he succumbed to injuries in a motor accident. The appellants moved the Tribunal under the Motor Vehicles Act claiming compensation and their prayer having been rejected by the Second Motor Accident Claims Tribunal, Cuttack, they have preferred the present appeal.

2. Short facts, on 3-5-1990 at about 10.30 p.m., it is alleged, the deceased along with his friend, the pillion rider, while proceeding towards Jobra on the Rind Road, in a motor cycle, the driver of the truck bearing No. OSC 3861 loaded with bamboos drove the vehicle in reverse gear and dashed against the motor cycle, as a result, tail of the bamboo pierced into the vital part of the deceased causing injuries which resulted in his death. The pillion rider also sustained some injuries but survived. On a report being lodged by the pillion rider the police registered a case u/s 304, I.P.C. The appellants filed a claim petition before the Claims Tribunal claiming compensation of Rs. 5 lakhs stating, inter alia, that the deceased was aged about 45 years at the time of death and was getting salary of Rupees 3,530/-. The owner as well as the insurer on being noticed filed separate

written statements denying that part of the appellants' assertion with regard to the manner of accident. Their positive assertion was that when the truck was standing the deceased drove the motor vehicle in rash and negligent manner and dashed against the protruding bamboos. Since the driver of the truck had no contribution to the accident, the appellants are not entitled to compensation either from the owner of the truck or the insurer.

3. On the pleadings of the parties, the learned Tribunal framed as many as 5 issues. The appellants adduced evidence both oral and documentary. The learned Tribunal on consideration of the materials on record disbelieved the evidence adduced on behalf of the appellants and held that the accident took place due to rash and negligent driving of the deceased and having held thus, dismissed the case.

4. Learned counsel appearing for the appellants contended that in a claim case under the Motor Vehicles Act, the evidence should not be scrutinised in the manner as is done in civil or criminal proceedings. On an overall appreciation of the materials on record if the Tribunal arrives at the finding that there was an accident which occurred due to rash and negligent driving of the driver, notwithstanding the discrepancy in the statements of the witnesses, the Tribunal should determine the compensation payable to the claimant. In the present case, as borne out from the impugned judgment two stories were advanced by the appellants, one was that the accident occurred when the offending vehicle was parked on wrong side of the road loaded with bamboos without parking light on and the other was that the offending vehicle loaded with bamboos moved in reverse gear and the protruding bamboos pierced into the body of the deceased causing his death. Since there were two different stories put forth during trial, the learned Tribunal rejected both the stories and dismissed the case. For better appreciation it is necessary to scrutinise the evidence on record to find as to in what circumstances the accident occurred.

5. In the F.I.R., Ext. 14, which was lodged by no other than the pillion rider, it was alleged that the offending truck was standing on the wrong side on the Rind Road loaded with bamboos, having no parking light and the protruding bamboos pierced into the neck of the deceased, as a result he fell down from the motor cycle at a distance and succumbed to the injury. The appellants examined three witnesses. Of them P.W. 1 admittedly is not an eye-witness. The next witness is P.W. 2. A reading of his evidence would show that while the vehicle in question was standing with loaded bamboos and without parking light, the deceased went up to the road on his motor cycle and dashed against the loaded truck. P.W. 3, however, gave a different story, inasmuch as the truck loaded with bamboos while moving in reverse gear, the deceased dashed against it. Since the evidence of P.Ws. 2 and 3 with regard to the manner of the accident is highly discrepant, the learned Tribunal was not inclined to rely upon the same and consequently refused to grant compensation as claimed. As noted earlier, evidence of P.W. 2 fits in with the averments made in the F.I.R. as to how and under what

circumstances the accident took place. True it is, P.W.3 gave altogether a different version. But that should not have weighed in the mind of the Tribunal to reject the statement of P.W. 2 that finds sufficient corroboration from the F.I.R. which was lodged within half an hour of the accident. In that view of the matter, I am inclined to hold that the accident occurred while the truck in question was parked on wrong side of the road loaded with protruding bamboos and without back light on.

Section 122 of the Motor Vehicles Act, 1988 which has relevance to the present case provides that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers. Undisputedly, the accident occurred when the truck loaded with protruding bamboos was parked. It was not the case of the opposite parties that such protrusion was clearly marked by any light or the back light of the vehicle was on. Since the accident happened during night, all precautions should have been taken by the driver to sufficiently indicate at the end of the protruding bamboos by fixing light so as to avoid danger to other users of the road. In my opinion, therefore, the acts and omission of the driver as aforesaid amount to negligence which led to the accident resulting in death of the deceased.

6. The next question arises whether the deceased contributed to the accident. The learned Tribunal by referring to the evidence of P.Ws. 2 and 3 though in paragraph 8 (sic) of the judgment held that the deceased was driving the motor cycle at high speed which resulted in the accident, on a thorough scrutiny of their evidence I do not find that they stated anything accusing the deceased to be solely responsible for the accident. Thus, I would hold that the entire blame should go to the driver of the truck and it was for his negligence that the deceased met with the accident.

7. Next question arises what should be the quantum of compensation to which the petitioners being the heirs of the deceased are entitled to. The deceased being an Inspector of Police in State service, according to the appellants, was getting salary of Rs. 3,539/- per month. His contribution to his family was Rs. 2,200/- per month. Since at the time of death the deceased was aged 45, applying twelve multiplier, I would hold that the appellants are entitled to compensation (Rs. 2,200 x 12 x 12) of Rs. 3,16,800/-.

8. In the result the appeal is allowed. The impugned order of the learned Tribunal is set aside. The petitioners are entitled to compensation of Rs. 3,16,800/- (rupees three lakhs, sixteen thousand and eight hundred). The National Insurance Company Ltd., respondent No. 2, with whom the truck in question was insured and the policy was valid from 30-6-1989 to 29-6-1990, is liable to pay the aforesaid amount with 12 per cent interest per annum from the date of presentation of the claim petition till payment or realisation. There shall be no

order as to costs.