(2022) 06 OHC CK 0074

In the Orissa High Court

Case No : MACA No.76 Of 2019

Shriram General Insurance Co. Ltd. APPELLANT

Vs

Monalisha Nayak @ Sahoo And Others RESPONDENT

Date of Decision : 20-06-2022

Acts Referred:
Motor Vehicle Act, 1988 — Section 166, 173

Citation : (2022) 06 OHC CK 0074

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : A.A.Khan, A.S.Nandy, R.C.Behera,

Final Decision : Disposed Of

Judgement

B.P. Routray, J

1. In a claim for compensation under Section 166 of the M.V.Act, learned Addl. District Judge-cum-5th M.A.C.T., Athgarh in M.A.C. 5 of 2014 has directed for payment of compensation of Rs.83,04,304/- on account of death of the deceased in the motor vehicular accident dated 4th August, 2014. The Insurer i.e., Shriram General Insurance Company Ltd. has come up in appeal under Section 173 of the M.V.Act.

2. Mainly the challenge is on the question of quantum and negligence. As per submissions of the Insurer, no negligence can be attributable on the driver of the offending truck for the cause of accident, or at best it can be up to 50% only. Secondly it is contended that the assessment of the Tribunal regarding income of the deceased and computation of loss of dependency are full of errors.

3. Before examining the first point which is relating to negligence on the part of the driver of the offending truck, a little narration of facts is necessary. The accident took place on 4th August, 2014 in the morning at 8.30 AM on the National Highway near Gada-khurda area. The main road including the place of accident is separated by the divider in the middle of the road thereby making the

road into two separate lanes. At the time of accident the deceased was moving in a Scorpio and offending truck was coming in other lane of the road. As per the narration of the eyewitnesses viz., P.Ws. 2 & 4 and the I.O. (O.P.W.1), the accident was a front collusion between the Scorpio and the truck. The Insurer tried to develop the case that the Scorpio in which the deceased was travelling, due to his own fault, while overtaking another truck get imbalanced, crossed the road divider and dashed against the offending truck which was coming in the opposite lane from the opposite direction. However, despite it's best effort P.Ws. 2 & 4 did not admit the same. But O.P.W.1– the I.O. was called to the witness box at the instance of the Appellant-Insurer and stated that to his knowledge the Scorpio dashed against the road divider first, went to the other side of the road and collided to the offending truck. Admittedly, this O.P.W.1 is not an eyewitness. He as the Investigating Officer in the criminal case has submitted the charge-sheet against the driver of the truck. It is not that either in the F.I.R. or in the charge-sheet this has been mentioned. He is not an eyewitness to the accident and has gained his knowledge through others. Therefore, his evidence to shift negligence on the driver of the Scorpio that it crossing over the road divider went to the opposite lane of the road to collide with the truck is not found trustworthy to be relied upon. The evidence of the eyewitnesses, particularly P.W.4 remains unshakable enough to fix negligence on the driver of the offending truck in the cause of the accident. Thus the contention of the Insurer to shift the negligence from the driver of the truck, or at least to the extent of 50% on the driver of the Scorpio is rejected.

4. Now coming to the quantum, the Tribunal by relying on the I.T. return copy of the deceased filed for the assessment year 2014-15 has determined the income of the deceased at Rs.6,22,450/- per annum. It is contended by the Insurer that the ITR-V under Ext.15 has been filed on 31st March, 2016 whereas the accident took place on 4th August, 2014. Therefore the figures of income mentioned in the ITR, which is filed after nineteen months of the accident, cannot be relied on substantially.

5. As seen from the impugned judgment, the Tribunal based on the income shown under Ext.15 has straightaway fixed the amount at Rs.40,845/- per month and added 40% thereof towards future prospects to determine the loss of dependency. The Tribunal has not also discussed about the truthfulness of the entries mentioned in Ext.15.

6. Admittedly, the ITR has been filed on 31st March, 2016 before the Income Tax Authorities when the deceased was no more. This means the ITR under Ext.15 is a document, which has not been filed by the deceased, but by someone else on his behalf after nineteen months of his death. The person who has filed the ITR has not signed in Ext.15 nor was he examined from the side of the claimant. As such, the veracity of the figures shown towards income of the deceased in Ext.15 is prima facie doubtful and so a complete reliance on the same would be disastrous. It is to be noted here that prior to filing of Ext.15 no other income tax

return was filed by the deceased. The deceased was never an IT Assessee during his life time. This adds further doubt to the figures of income mentioned in Ext.15 that the same might have been filed for the purpose of claim case. But at the same time the evidence of the wife of the deceased and other witnesses regarding profession and avocation of the deceased that he was a contractor and doing construction business on contract remains un-rebutted. His death of birth and age for the purpose of application of multiplier also remains undisputed. Keeping in view all such factors and doing some guesswork, the income of the deceased is reduced to Rs.25,000/- per month against the amount determined by the Tribunal. For this purpose, the annual accounts report and the work orders issued in favour of the Maa Sarala Construction under Exts.17 to 22 has also been considered and taken care of.

7. Undisputedly, 40% towards future prospects as decided in the case of National Insurance Company Ltd. vrs. Pranay Sethi and others, (2017)16 SCC 680 is liable to be added to the income and for that purpose Rs.10,000/- is calculated. Thus, the annual income comes to (Rs.25,000 + Rs.10,000) x 12 = Rs.4,20,000/-. Deducting 1/4th towards personal expenditure, the amount comes to Rs.3,15,000/-. Here the contention of the Insurer for deduction of 1/3rd amount towards personal expenditure is found unacceptable for the reason that even though the father of the deceased had some income still no evidence has been brought on record to show that he was not a dependant on the income of the deceased.

8. Accordingly the loss of dependency determined is at Rs.3,15,000/- per annum and applying multiplier 16, the total loss comes to Rs.50,40,000/-. Adding Rs.70,000/- thereto towards general damages and further sum of Rs.40,000/- to the minor son Anshuman (Respondent No.2) towards parental consortium, the total sum becomes Rs.51,50,000/- (Fifty one lakhs fifty thousand).

9. In the result, the total compensation is modified to Rs.51,50,000/-(Fifty one lakhs fifty thousand), which is payable along with 6% per annum from the date of filing of the claim application by the Insurer. The Insurer is directed to deposit the reduced compensation of Rs.51,50,000/- (Fifty one lakhs fifty thousand) before the Tribunal along with interest @6% per annum from the date of filing of the claim application i.e. on 30th September, 2014 within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the Tribunal.

10. With aforesaid modification in the compensation amount, the appeal is disposed of.

11. The statutory deposit made by the Insurer-Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

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