
(1997) 06 OHC CK 0009

In the Orissa High Court

Smt. Ahali Sahu

APPELLANT

Vs

Bimal Kumar Ghosh and Others

RESPONDENT

Date of Decision : 20-06-1997

Acts Referred:

Citation : (1998) 1 ACC 190 : (1997) 84 CLT 550

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Judgement

P.K. Mohanty, J.—This is an appeal against the impugned order of the Second Motor Accident Claims Tribunal (S.D.), Berhampur dismissing the M.A.C. No. 381 of 1992 for claim of compensation filed by the alleged widow of the deceased Bhaskar Sahu, who died in a motor accident.

2. The undisputed facts are that on 22nd October, 1991 at about 6 a.m., while Dinabandhu Sahu was going to his village from Kesapur by his cycle alongwith deceased Bhaskar Sahu, as a pillion rider, a truck bearing Regn. No. SCA 6307 being driven in a rash and negligent manner, came from behind and dashed against them, as result of which deceased Bhaskar Sahu died at the spot and Dinabandhu sustained severe bodily injuries. The parents of the deceased filed M.A.C. No. 624 of 1992, claiming compensation of Rs. 1,50,000/- from the respondents. The present appellant Smt. Ahali Sahu claiming to be the widow of the deceased filed M.A.C. No. 381 of 1992 and claimed compensation of Rs. 1,00,000/-. The injured Dinabandhu also filed an application claiming compensation of Rs. 50,000/- for the injuries sustained by him in course of the accident. Respondent No. 1, the owner of the offending truck did not contest the case and was set ex parte. However, respondent No. 2, the insurer filed its written statement disowning its liability to pay any compensation and denied the allegations made in the petition. It was pleaded that the offending truck was not under valid insurance cover on the date of accident inasmuch as the accident in question was not caused due to the rash and negligent driving of the offending truck by its driver.

3. The Member, Second Motor Accident Claims Tribunal (S.D.), Berhampur has held that the accident was caused due to rash the negligent driving of the driver and has ultimately resulted in the death of deceased Bhaskar. It was further held that the legal representatives of the deceased are entitled to get compensation for the death resulted due to the accident. However, while considering the case of the present appellant Ahali Sahu alone with the claim application filed by the parents of the deceased M.A.C., No. 624 of 1992, the Tribunal has determined as amount of Rs. 87,000/- as the just compensation payable to the legal representatives.

4. The Member, Claims Tribunal while considering the claim of the present appellant has found that she has failed to prove that she was the legally married wife of the deceased and therefore, is not entitled to any compensation and necessarily, the parents of the deceased were held to be entitled to receive the amount determined as compensation. The appellant is aggrieved with the order refusing to grant any compensation on the finding that she has not been able to prove her marital status with deceased.

5. The main plank of the argument of Mr. G.P. Mohanty, learned Counsel for the appellant is that the finding of the Tribunal with regard to the proof of marital status of the appellant with the deceased is based on misconception of law and erroneous appreciation of materials on record. It is submitted that the learned Tribunal while taking up both the applications, one filed by the parents and the present by the widow of the deceased together, ought to have framed an issue, as to whether the claimant-appellant was in fact the widow of the deceased, the said fact having been disputed by his parents and that having not been done, the ultimate finding is vitiated. It is stated that the Tribunal could not have discarded the evidence of the father of the widow with regard to the proof of marriage with the deceased on the ground that he is an interested witness. Mr. P.K. Parida, learned Counsel for respondent, 3 and 4 on the other hand contends that in view of the nature of evidence adduced, the marriage of the appellant with the deceased cannot be said to have been proved. Mr. S.S. Rao, learned Counsel for the respondent No. 2, insurer has however nothing is submit on question of legal heirs of the deceased which is inter se between the alleged widow and the parents of the deceased.

6. Having heard the learned Counsel for the parties, the only question that calls for determination is, as to whether the finding of the learned Member, Claims Tribunal that the claimant-appellant has not been able to prove that she is the legally married wife of the deceased and as such is a legal heir entitled to compensation, can be sustained in law. Undisputedly no issue was framed by the Claims Tribunal as to whether the appellant was the legally married wife of deceased Bhaskar. In a cryptic, order, claim of the appellant that she was the legally married wife and the widow of the deceased and is entitled to compensation has been rejected on a casual enquiry. It has been observed in the impugned judgment itself that no issue was framed on this aspect and

incidentally the claim is being discussed. The learned Member, Claims Tribunal has observed at para 10 of the judgment as under:

P.W. 1 has claimed to be the wife of the deceased and in support of it, she has relied on the evidence of PWs 4 to 6. Though no issue is framed, I discussed it incidentally....

The evidence of PW 5, the father of the claimant-widow has been rejected on the ground that he is an interested witness. In the same breath, the Tribunal has also rejected the evidence of PW 4 since he is not related to the widow-claimant. If PW 5's evidence was not believed on the ground that he was an interested witness being related to the claimant as the father, it is not understood as to how, the evidence of PW 4 could be rejected on the ground that he is not a relation and as such, his evidence on the question of the marriage was not believable.

7. A witness who is natural one, cannot be always said to be interested. A relation of a victim may be a natural witness. It is the settled principle of law that the relationship and interestedness is not a ground for discarding the evidence but the Court should only examine the evidence with caution. The evidence of an interested witness is not necessarily unreliable and it is not the law that the testimony of interested witness is entitled to no weight, his evidence only be scrutinised with care. The Apex Court in Brathi alias Sukhdev Singh Vs. State of Punjab, , in a criminal matter have observed that mechanical rejection of evidence of one of the ground that he is interested is improper. It may be borne in mind that so far as proof of factum of marriage of a daughter is concerned, a father is a natural witness and possibly the best possible witness if corroborated by the other independent witnesses and/or materials on record and the circumstances of the case. Thus, discarding the evidence of PW 5, the father of the claimant-widow solely on the ground that he being the father is an interested witness is improper and cannot be sustained. The Tribunal on the one hand rejects the evidence of PW 5, he being a relation and interested witness but strangely at the same time, on the other hand, it has discarded the evidence of PW 4, an independent witness on the ground that he being not a relation to the widow or her family, his evidence with regard to the marriage should be rejected. In any view of the matter, on a perusal and consideration of the reasoning given by the learned Tribunal, it appears that the matter has not been dealt within its proper perspective to find out from the evidence if the claimant was the legally married wife of the deceased entitling her to claim compensation and in that view of the matter, such finding is not sustainable in law and needs fresh consideration.

8. In the result, the appeal is allowed and the impugned judgment/award of the Second Motor Accident Claims Tribunal (S.D.) rejecting the claim of the appellant is set aside. The matter is remitted back to the Tribunal for fresh consideration of the matter in accordance with law and keeping in view the observations made herein, after allowing the parties opportunity of hearing and, if so desired,

allowing the parties to lead any further evidence in support of their respective claims for entitlement of compensation. On determination of the compensation and the entitlement, the Tribunal shall direct apportionment thereof, if so required, amongst the claimants in accordance with law. The matter being of the year 1991, the learned Member, Claims Tribunal shall do well in disposing of the case expeditiously but not later than four months from the date of communication of this order.

The lower Court records be sent forthwith. There shall be no order as to costs of this appeal.