
(2012) 07 OHC CK 0010
In the Orissa High Court
Case No : Misc. Appeal No. 236 of 1994

Smt. Ahalya Behera and Others

APPELLANT

Vs

Inspector General of Police and Another

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2013) 115 CLT 70

Hon'ble Judges : V. Gopala Gowda, C.J

Bench : Single Bench

Advocate : P.C. Mohanty, A.K. Dalai, A. Mohanty, C.R. Patnaik and L.M. Nanda, for the Appellant; R.K. Mohapatra, Government Advocate, for the Respondent

Judgement

V. Gopala Gowda, C.J.—Aggrieved by the Judgment dated 4.1.1994 passed by the Second Motor Accident Claims Tribunal (SD), Berhampur in M.A.C. No. 397 of 1991, dismissing the claim filed by the claimants, the present appeal has been filed by the claimants seeking for allowing the appeal & awarding just & reasonable compensation, urging various facts & grounds. In the impugned Judgment, the undisputed facts have been adverted. Therefore, there is no need for this Court to repeat the same in this Judgment.

On 15th October, 1991 at about 12 noon while the husband of the first claimant-deceased Niranjan Behera was coming from Karachuli to his village Biranchipur on a cycle in his left side, the Truck bearing registration number OAG 1830 being driven in a rash & negligent manner came from his behind & (sic) him down on the road in between Karachuli & Baghua, as a result of which he sustained severe bodily injuries. Immediately he was admitted in the hospital & in spite of treatment, he succumbed to the injuries. Hence the claim petition was filed by his wife & children.

2. The Respondents filed joint written statement denying the averments made in the claim petition & the liability to pay any compensation. Their stand was that one Bijaya Kumar Swain was returning from Karachuli driving the offending

vehicle carrying policemen towards Buguda Police Station in a normal speed & blowing horn. At that time the deceased having failed to control the cycle due to the rough road, came in contact with the offending vehicle for which he fell down & sustained bodily injuries. Later on he succumbed to the said injuries in the hospital. On the basis of the report lodged by the ASI, Kishore Kumar Pradhan, Buguda P.S. Case No. 148 of 1991 was registered, the matter was investigated & final report was submitted to the effect that there was no culpable negligence on the part of the driver.

3. On behalf of the claimants, two witnesses were examined & three documents were marked & exhibited. Appellant No. 1-widow of the deceased examined herself as P.W.1 alongwith one Nalinikanta Behera (an eye witness) as P.W.2. Ext. 1 is the certified copy of the plain paper F.I.R., Ext. 2 is the formal F.I.R., Exts. 3 is the certified copy of the Post-mortem report. On behalf of the Respondents, the driver of the offending vehicle was examined as the sole witness but no document was exhibited.

4. The Tribunal framed four issues & answered the same against the Appellants. Neither the evidence of the witnesses examined on behalf of the Appellants nor Respondents, were given any weightage by the Tribunal. However, the case pleaded by the Respondents was accepted. It was observed that the accident occurred due to the negligence of the deceased who was riding on a cycle on the fateful day. Though the final report was submitted to the effect that there was no negligence on the part of the driver of the offending vehicle, the same was not protested by the claimants.

Therefore, it was presumed that the claimants have nothing to say in that respect. The Tribunal has observed that though P.W.2 was examined by the police with regard to the accident, the certified copy thereof was not filed. Had such statement been filed, the circumstances under which the final report was submitted, could have been judged.

5. Learned Counsel for the Appellants contended that the Tribunal has committed gross error in making a nil award. He further contended that while disbelieving the evidence of the driver, the sole witness examined on behalf of the Respondents, the Tribunal should not have disbelieved the claimants. That apart, disbelieving the evidence of P.W.2 who has categorically stated that he was examined by the police with regard to the accident, & relying on the police papers, the Tribunal dismissed the claim application which is not sustainable in the eye of law. It is contended that the deceased was a mason & he was getting engagements regularly.

6. In support of the case of the Appellants, decisions in Mst. Rani Khinchi and Others Vs. Kaluram and Others, & Divisional Manager, Orissa Forest Development Corporation Ltd. Vs. Shila Sharma and Another, were relied on.

7. No counter-affidavit is filed.

8. With reference to the aforesaid rival legal contentions, the following points arise for consideration of this Court.

(i) Whether the findings recorded by the Tribunal are erroneous ?

(ii) Whether the offending vehicle (Truck) bearing registration number OAG 1830 was being driven in a rash and/or negligent manner & caused death of Niranjana Behera ?

(iii) Whether the Petitioners are entitled to compensation & if so, what should be the quantum thereof?

(iv) Whether the claim is entertainable as against all or any of the Respondents?

(v) To what relief?

9. The first two points are required to be answered in favour of the claimants for the following reasons.

10. It is an undisputed fact that the accident took place on 15th October, 1991. The rejection of the claim petition is solely for the reason that the negligence on the part of the driver of the offending vehicle could not be proved but there was negligence on the part of the deceased. The finding of fact recorded by the Tribunal is contrary to the facts of the case & the legal evidence available on record. That apart, the finding recorded on the question of negligence believing the interested testimony of the driver (R.W.1) is contrary to the decisions (supra). Therefore, the rejection of the claim petition is vitiated in law. Since the first point is answered in favour of the claimants, just & reasonable compensation is to be awarded in favour of the claimants, the widow & the children of the deceased who were minor at the time of death of their deceased-father.

11. Learned Counsel for the Appellants contended that the deceased was a mason. He was aged about 42 years & earning Rs. 50/- to Rs. 60 per day. However, no document is produced in that regard. In absence of any documentary evidence in support of the annual income of the deceased, the Tribunal should have taken into consideration the structural formula which is provided in the Schedule to Section 163-A of the M.V. Act inserted by way of an amendment of the Motor Vehicles Act, 1988 with effect from 14.11.1994. In the facts & circumstances of the case, the income of the deceased per month is taken at Rs. 1800/- arriving at the annual income at Rs. 21,600. If the annual income is taken at Rs. 21,600, after deduction of 1/3rd therefrom for personal expenses, the contribution to the family would come to Rs. 14,400/-. In view of the decision of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , multiplier of 15 is applied. Therefore, taking the annual income at Rs. 21,600/- & deducting 1/3rd therefrom towards own expenses of the deceased, the annual dependency would come to Rs. 14,400 & applying 15 multiplier, the loss of total dependency would come to Rs. 2,16,000/- In view of the decision of the Apex Court in the case of General

Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the claimants are entitled to Rs. 40,000/ towards love & affection, loss of estate & funeral expenses & I so direct. Therefore, the claimants are entitled to the total compensation of Rs. 2,56,000, same being the just & reasonable compensation. For the reasons stated above, the impugned Judgment is set aside, the appeal is allowed. The State is directed to pay the amount of compensation of Rs. 2,56,000/- as awarded hereinabove, with 6% interest from the date of claim. It is further directed that out of the total amount of compensation including interest, 50% shall be equally apportioned among the three claimants & the remaining amount of 50% shall be equally divided & deposited in the name of each of the claimants separately in shape of fixed deposit in any nationalised bank of the choice of the claimants for a period of five years. The entire exercise shall be completed within four weeks from the date of receipt of this Judgment. The interest that may be earned on the Fixed Deposits, as directed above, shall be permitted to be withdrawn by the claimants for being utilised for the welfare of the children & also for development of the family. They are also at liberty to withdraw the amount that is ordered to be deposited in the nationalised bank, if the same is required & established before the Tribunal by filing an application that the amount or a portion of the same is required for the family necessity or any other developmental purpose.