

(2005) 06 OHC CK 0047

In the Orissa High Court

Case No : M.A.C.A. No's. 89 and 203 of 2003

Sri Gananath Sahoo and Another

APPELLANT

Vs

Sri Gobinda Chandra Agrawala and Another
 National
Insurance Co. Ltd. Vs Gananath Sahoo and Others

RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) 101 CLT 530

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

Bench : Single Bench

Advocate : S.N. Kar, in M.A.C.A. No. 89 of 2003 and S.K. Padhi, D. Mohapatra, D. Das and G. Mishra, in M.A.C.A. No. 203 of 2003, for the Appellant; S.K. Padhi, D. Mohapatra, B.K. Sahoo, S.K. Mohapatra, D. Das and G. Mishra for Respondent No. 2 in M.A.C.A. No. 89 of 2003 and S.N. Kar, for Respondent Nos. 1 and 2 in M.A.C.A. No. 203 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—Assailing the award dated 21st November 2002 passed by the Second Motor accident Claims Tribunal, Cuttack in Misc. Case No. 5 of 1995 the claimants have filed M.A.C.A. No. 89/2003. The same award has been assailed by the Insurance Company in M.A.C.A. No. 203/2003. As the facts and points of law involved in both the appeals are same, both the matters were heard together and are disposed of by this common judgment.

2. The claimants filed an application before the Second Motor Accident Claims Tribunal u/s 166 of M.V. Act, inter alia, stating that their son Maheswar Sahoo met with an accident on 3.11.2004 and succumbed to the injury sustained. They alleged that the said accident occurred due to rash and negligent driving of the driver of the vehicle bearing Registration No. ORM-6765 and accordingly they claimed compensation for the death of their son.

3. On receiving notice the Insurance Company appeared and filed written

statement denying its liability to pay any compensation. The owner of the vehicle however neither appeared nor filed any written statement.

4. To substantiate their case the claimants got examined as many as three witnesses and exhibited six documents. On behalf of the Insurance Company neither any witness was examined nor any document was exhibited. The Tribunal after analyzing the evidence, both oral and documentary, awarded a sum of Rs. 1,44,000/- to the claimants with interest at the rate of 6% per annum from the date of filing of the case i.e., on 2.1.1995 till realisation which award is assailed by both claimants and Insurance Company.

5. According to Mr. Kar, Learned Counsel for the claimants, the Tribunal acted illegally and with material irregularity in calculating the compensation taking the age of the father as the factor, though the mother was also a claimant and the compensation should have been calculated taking the age of the mother who was 39 years. Mr. Kar further submitted that if the age of the mother would have been taken as the factor the amount of compensation awarded should have been much more. It was further submitted that awarding 6% interest from the date of filing of the claim petition in the year 1995 was unjustified, as in fact the claimants were entitled to interest @ 9% per annum and that too from the date of the accident. On the aforesaid two grounds Mr. Kar submitted that the amount awarded should be enhanced.

6. Mr. Padhi, Learned Counsel appearing for the Insurance Company, at the other hand, strongly repudiated the submissions made by Mr. Kar. According to Mr. Padhi, the Tribunal has rightly taken into consideration the age of the father of the deceased who was one of the claimants. It was further submitted that the Tribunal acted illegally and with material irregularity in awarding a sum of Rs. 1,44,000/-. The calculation on different heads being not justified the Insurance Company is not liable to pay the said amount. It was further submitted that as the owner of the vehicle chose not to contest the litigation and the condition stipulated in the policy was violated and as the driver of the offending vehicle was not possessing a valid driving licence on the date of the accident, the Insurance Company is not liable to pay the compensation amount.

7. I have heard Learned Counsel for the parties at length and perused the materials available meticulously. After going through the impugned award and the discussions made therein, I find that the Tribunal has not committed any illegality. It has taken into consideration the evidence both oral and documentary in proper perspective. It has put right questions and has arrived at right conclusions. The award does not suffer from any infirmity or error apparent on the face of the record. The rate of interest as has been decided in a catena of decisions is to be 6% per annum, and as such, I feel the Tribunal has not committed any error.

So far as the submission of Mr. Padhi is concerned it is well settled that not possessing a valid driving licence and non-observation of conditions of the policy

amount to breach of policy conditions and for such breach the poor claimants should not suffer and the Insurance Company should be directed to pay the awarded amount and liberty should be given to it to realise the same from the owner, as has been held in the case of National Insurance Co. v. Challa Bharathamma reported in 2005 (1) TAC 4.

8. In view of the above facts and circumstances and on a cumulative assessment of all the materials, in a spirit of Lok Adalat, this Court feels that the amount awarded is just, proper and equitable. The Misc. Appeals have no merit and are dismissed. However liberty is given to the Insurance Company, if so advised, to file appropriate petition before the Tribunal within six months. If such a petition is filed the Tribunal shall issue notice to the owner and decide as to whether the driver of the offending vehicle possessed a valid driving licence on the date of accident and as to whether there was breach of any other policy condition. If the Tribunal arrives at the conclusion that the Insurance Company was not liable to pay the compensation amount, it shall pass necessary orders for realisation of the said amount from the owner of the vehicle.