

(2009) 03 OHC CK 0063

In the Orissa High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Antaryami Purohit and Others

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (2010) ACJ 2102 : (2009) 107 CLT 704 : (2009) 1 OLR 908 Supp

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

Bench : Single Bench

Judgement

A.S. Naidu, J.—The Judgment dtd. 16th August, 2003 passed by the District Judge-Cum-MACT (1), Bolangir, in M.J.C. No. 519/115 of 1993-2001 is assailed in this appeal filed u/s 173 of the Motor Vehicles Act, 1988 by the New India Assurance Co. Ltd., Bolangir Division.

2. Purushottam Purohit along with his son Artatrana Purohit and others was travelling in an Ambassador Car bearing Regn. No. OR-03-1819 from Bolangir to Bhubaneswar on 30th May, 1993 morning. It was alleged that due to rash and negligent driving of the driver, the said Car had a head on collision with a Truck bearing Regn. No. ORH-1945 which was also travelling in a high speed and coming from the opposite direction. Consequent to such accident Purushottam Purohit sustained grievous injuries and unfortunately succumbed to the said injuries. Other occupants of the Car also sustained injuries. Purushottam Purohit, it is averred in the petition filed u/s 166 of the M.V. Act, was aged about 62 years at the time of the death and he was earning Rs. 10,000 per month from his pension. Respondent Nos. 1 to 5 claiming to be the legal heirs and successors of late Purushottam Purohit filed an application u/s 166 of the M.V. Act claiming compensation to the tune of Rs. 4,62,000 towards loss of income, loss of love and affection, mental shock and suffering, expenditure for Sudhikriya etc.

3. After receiving summons the owner of the Car chose not to contest the case and remained ex parte. The Appellant-Insurance Company, with whom the Car

was insured, filed a written statement vaguely denying the allegations and took the stand that the accident occurred due to composite negligence of the drivers of both the vehicles. The further plea taken by the Insurance Company was that as neither the owner nor the insurer of the offending truck was impleaded as parties in the claim petition, the liability of the Company shall at best be 50% of the amounts awarded.

4. Basing upon the pleadings, the Tribunal framed five Issues. In order to substantiate their case the claimants got two witnesses examined and exhibited six documents. Unfortunately neither any oral evidence was adduced by the Insurance Company or by any other Opposite Parties, nor any document was exhibited. The Tribunal after discussing the evidence, both oral and documentary, in extenso came to the conclusion that the accident occurred due to rash and negligent driving of the driver of both the vehicles. It further held that though the accident took place due to composite negligence of both the vehicles, i.e. the Car and the Truck, as the Appellant-Insurance Company is the insurer of both the vehicles, it is liable to pay the entire compensation.

5. So far as the quantum of compensation is concerned, the Tribunal observed that Purushottam Purohit was a retired employee and he was drawing pension of Rs. 3,000 per month, and awarded a sum of Rs. 2,00,000 with interest " 9% per annum from the date of filing of the petition, i.e. 11.11.1993 till realization of the amount.

6. The said award is assailed in this appeal mainly on the ground that none of the claimants being dependants upon the deceased Purushottam Purohit and as each of them is well settled in their life, the Tribunal acted illegally and with material irregularity in awarding a sum of Rs. 2,00,000.00 towards compensation. In the alternative it was argued by Dr. Rath, Learned Counsel for the Appellant-Insurance Company that the tribunal committed an apparent error in not deducting at least 1/3rd of the income of Late Purushottam Purohit towards his personal expenses and calculating the compensation taking the monthly income to be Rs. 3,000. In short, according to Dr. Rath the claimants being neither dependants nor were enjoying any pecuniary benefits out of the earnings of the deceased, no compensation can be awarded under the head of loss of dependency. In support of such contentions Dr. Rath, relied upon the decision of Andhra Pradesh High Court in the case of Dilip Kumar Moses v. V.J. Cyrice and Ors. reported in 2003 (1) T.A.C. 266 (A.P). In the said case Learned Judge after discussing the point involved came to the conclusion that as the claimants were the sons and daughters of the deceased who were well settled in their life, long prior to the death of deceased and daughters were married long back, they cannot be treated to be dependants on the deceased. It was also held in the said case that there was neither a plea nor any evidence with regard to the dependency or at least to show that the deceased was contributing anything out of his income for the benefit of his children. In the absence of any such evidence on the part of the claimants it was held that denying the compensation towards

loss of dependency was justified. Dr. Rath also in support of his submissions relied upon the decision of the Supreme Court in the case of Smt. Manjuri Bera v. Oriental Insurance Co. Ltd. reported in 2007 (2) T.A.C. 431.

7. Learned Counsel for the claimants, on the other hand, contended that their father Purushottam Purohit was a retired employee and was drawing handsome amount towards pension and he was also contributing a part of it towards welfare of the family, and as such the conclusions arrived at by the Tribunal and the award of Rs. 2 lakhs is just and proper.

8. Considered the submissions made by Learned Counsel for the parties diligently and went through the Judgment and evidence meticulously. The moot question that needs to be decided in the case at hand is as to whether the claimants, who were not dependant upon the deceased of a motor vehicle accident, can claim compensation. In the case at hand, all the claimants are sons and daughters of late Purushottam Purohit who lost his life in the accident. The claimant Nos. 1,2 and 3 are the major sons and 4 and 5 are the married daughters. There is no averment any where in the claim petition, nor any evidence, either oral or documentary, to reveal that any of the claimants were dependant upon Purushottam Purohit, who was aged about 62 years of age.

9. Section 166 of the Motor Vehicles Act, 1988 stipulates that an application for compensation arising out of motor vehicle accident resulting in death of a representatives of the all or any of the legal deceased. The word person can be filed by "representatives" has not been defined under the Act. Thus, it is clear that to claim compensation a person may not be a dependant of the deceased, but must be a legal representative. Section 2(11) of the CPC defines "Legal Representative" as follows:

Section 2(11)- "Legal Representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

In the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , it is observed that legal representative is one who suffers on account of death of a person due to a motor vehicle accident. Therefore, even if there is no loss of dependency, legal representatives, who are claimants, will be entitled to compensation. The Supreme Court in the case of Manjuri Bera (supra) held that quantum of such compensation should not be less than the liability flowing from Section 140 of the Act.

It is no more res-integra that a compensation under the Motor Vehicles Act should not be a bonanza to the claimants, but it should always be just and proper. Computation of damages under the head of pecuniary loss to the estate of the deceased includes loss of earnings, damages towards loss of personal property and damages towards loss of expectation of life. It also include's the

income of the deceased and possible savings he might have made to enrich the estate. The legal representatives, who are entitled to succeed to the estate of the deceased are undoubtedly entitled to claim compensation towards loss to the estate. However, the pecuniary loss suffered by the legal representatives as a result of death of the deceased always depends on the actual dependency and the pecuniary benefit they were enjoying from the income of the deceased towards food, shelter, education and to meet other day to day requirements. The compensation payable towards loss of dependency must be the benefit which the dependants were enjoying and expected to enjoy in future, as a result of their dependency on the deceased. Therefore, though all the legal representatives of the deceased have a locus standi to file a claim petition u/s 166 of the M.V. Act, 1988, in order to get the compensation towards loss of dependency they have to further establish loss of pecuniary benefit being enjoyed by them as dependants on the deceased. (see Dilip Kumar Moses (supra)).

10. In the case of United India Insurance Co. Ltd. v. M. Ramulu and Anr. reported in 1988 A.C.J. 1450 it was held that brother and sister of the deceased who were not dependants on the deceased are not entitled to seek compensation. In the case of A.P.S.R.T.C. v. P. Raghavaiah reported in 1989 A.C.J. 622 : 1989 (2) T.A.C. 341 (A.P.), the Andhra Pradesh High Court held that the married daughters living separately from their mother are not entitled to receive any compensation on account of the death of their mother. In the case of New India Assurance Co. Ltd. v. Pedada Prabhavathi reported in A.C.J. 615, it was held that married daughter was ineligible to get a share in the compensation granted by the Tribunal.

11. Madhya Pradesh High Court in the case of Nani Bai and Others Vs. Ishaque Khan and Others, held that the married daughters, who are not dependants on the deceased are not entitled to compensation. A division bench of Gujarat High Court in the case Revaben and Others Vs. Kantibhai Narottambhai Gohil and Another, held that major sons living separately from the deceased-father and married daughters of the deceased, who are also living separately are not entitled for compensation.

At this juncture it will be pertinent to refer to the Judgment of the Supreme Court in the case of M.P.S.R.T. Corporation v. Sudhakar reported in AIR 1977 S.C. 1189. In the said case the Supreme Court held that the husband is entitled to claim compensation for however I makes it clear Perusal of the said decision, that the compensation was the death of the wife awarded on the basis of the contributions the deceased wife who was a working woman was making for household expenses out of her income. The Supreme Court in the case of Manjuri Bera (supra) while dealing with similar situation came to the conclusion that under such circumstances compensation can be awarded only in the light of the provisions of Section 140 of the M.V. Act.

12. In the case at hand, though it is claimed that Purushottam Purohit was drawing a pension of Rs. 4,795. In evidence it is stated that his income was Rs.

10,000 per month from pension and tuition. Unfortunately, however, no document was produced in support of such plea. If Purushottam Purohit was in fact a pensioner it would have been prudent for the claimants to file his pension paper. In the absence of any scrap of paper supporting the stand taken by the claimant that his father was in fact drawing pension, the Tribunal on the basis of oral evidence assessed the income of the deceased to be Rs. 3,000 per month. That apart there is also no evidence to the effect that any of the claimants were dependent upon the deceased. However, keeping in view the ratio of the Judgments cited above, this Court contribution made by Purushottam feels that Purohit any after meeting his day to day requirements, becomes a part of the estate and the legal representatives were entitled to succeed to the estate of the deceased.

13. After taking into consideration all the facts and the position of law, this Court feels that this is a case where there is neither any pleading nor any evidence to reveal that the claimants were either dependant on their father or were enjoying any pecuniary benefits out of his earnings and as such no compensation can be awarded under the head of loss of dependency. But then, they cannot be deprived of compensation towards loss of estate, loss of love and affection, mental shock and suffering and funeral expenses.

14. According to Dr. Rath that while assessing compensation the Tribunal has not taken into consideration the personal expenditure of the deceased and has not deducted 1/3rd of his income which was assessed at Rs. 3,000. Taking the said fact into consideration and in the light of the ratio of the Judgments referred to above, this Court feels that a compensation of Rs. 1,00,000.00 (rupees one lakh only) cumulatively towards loss of estate, love and affection and funeral expenses would be just and proper and accordingly directs the Appellant-Insurance Company to pay a sum of Rs. 1,00,000.00 (rupees one lakh only) as compensation with interest " 7 1/2% per annum from the date of filing of the claim petition, i.e. 11.11.1993 till realization of the amount.

15. The Appellant-Insurance Company is directed to deposit the entire amount as per this order before the Tribunal within six weeks hence. Out of the said amount a sum of Rs. 15,000.00 (rupees fifteen thousand) shall be deposited in Fixed Deposit in the name of the each of the claimants in any Nationalized Bank for a period of five years with no loan facilities and the rest amount with interest accrued thereon be paid to them equally in cash.

16. The statutory deposit made before this Court shall be returned to the Appellant-Insurance Company with interest accrued thereon on proper application by a crossed cheque/draft after the awarded amount with interest is deposited before the Tribunal.

With the aforesaid modification of the impugned Judgment, the MACA is disposed of.