
(1979) 10 OHC CK 0007
In the Orissa High Court
Case No : Misc. Appeal No. 13 of 1977

The New India Assurance Co. Ltd.

APPELLANT

Vs

Surjyamoni Padhi and Others

RESPONDENT

Date of Decision : 11-10-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110C(2A), 110CC, 96

Citation : (1980) ACJ 253 : AIR 1980 Ori 17 : (1979) 48 CLT 631

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

Bench : Single Bench

Advocate : P. Roy and S.S. Das, for the Appellant; H.B. Swain and B.P. Tripathy, (for Nos. 1 to 6), H.K. Behera and A.K. Baral, (for No. 7), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanti, J.—This appeal is u/s 110-D of the Motor Vehicles Act by the insurer and is directed against the decision of the District Judge-cum-Motor Accidents Claims Tribunal, Balangir, awarding a sum of Rs. 23,460/- as compensation in favour of respondents 1 & 2.

2. One Bishnu Prasad Padhi, aged about 52 years, was a licensed stamp vendor at Titilagarh. On 24-9-1973 at about 8 a.m. while he was going on a cycle in front of the Munsif's court at Titilagarh, a truck belonging to respondent No. 7 Dewan Chand Jam, knocked down and ran him over, causing his instantaneous death at the spot. Respondents Nos. 1 and 2 are the son and widow respectively, respondent No. 3 is the daughter-in-law and respondents 4 to 6 are the grandchildren of the deceased. They claimed a total compensation of Rs. 50,000/-. According to them, the accident which resulted in the death of the deceased was due to rash and negligent driving of the truck.

3. The owner of the vehicle entered appearance through a lawyer but filed no counter. The lawyer did not also appear at the trial stage. The insurance company, the appellant herein, filed a counter denying the above allegations.

4. Before the Tribunal two witnesses were examined by the claimants. P.W. 1 Ram Swarup Agrawalla is the sole eyewitness to the occurrence. P.W. 2 is the son of the deceased who gave evidence about the income of the deceased. No witness was examined by the insurance company. On the evidence of P.W-1, the Tribunal came to the conclusion that the driver was rash and negligent in driving the truck which resulted in the death of the deceased. It determined the compensation at Rs. 23,460/- with interest at 6 p. c. p. a. from the date of accident till the date of payment and awarded costs of Rs. 400/- in favour of respondents 1 and 2 only, holding that respondents 3 to 6 were not entitled to any compensation. Aggrieved by this decision, the insurance company has come up in appeal. Respondents 1 to 6 have preferred a cross-objection under Order 41, Rule 22, C.P.C. claiming higher compensation. It was, however, conceded by the learned counsel for the respondents that respondents Nos. 3 to 6 are not entitled to any compensation.

5. As already stated, the appeal is by the insurer of the vehicle which caused the death of the deceased. In the memorandum of appeal the appellant has challenged the findings of the Tribunal on the question of rashness and negligence-in driving the vehicle and the quantum-of compensation awarded by the Tribunal. Mr. Swain for the respondents took: a preliminary objection that the appeal by the insurer is incompetent inasmuch, as the grounds of the appeal are barred. u/s 96(2) of the Motor Vehicles Act.

6. Sub-section (2-A) of Section 110-C of the Act provides as follows:--

"Where in the course of any inquiry the Claims Tribunal is satisfied that -

(i) there is collusion between the person making the claim and the person against whom the claim is made, or

(ii) the person against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded by it in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

A conjoint reading of both the Sections 96(2) and 110-C (2-A) indicates that. when there is collusion between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim, the insurance company is entitled to defend the suit on all or any of the grounds that are available to the person against whom the claim has been made. In the present case, the insured did not enter contest and remained ex parte before the Tribunal. He has also not preferred any appeal. It was contended on behalf of the respondents that the appellant should have obtained permission of the Tribunal to contest the claim. I am unable to accede to this contention. The appellant was served with a notice as contemplated u/s 96(2) of the Act and was impleaded as a party to the claim proceeding. Before

the Tribunal the respondents did not take the stand that the appellant was not entitled to defend the suit without obtaining permission. The appellant was allowed to contest the claim and cross-examine the witnesses without any objection by the respondents. The appellant has been saddled with the entire liability for payment of compensation. The appellant is, therefore, entitled to challenge the quantum of compensation as also its basis in this appeal. The preliminary objection raised on behalf of the respondents is without any merit.

7. The evidence of P. W. 1 leaves no room for doubt that it was on account of the rash and negligent driving of the truck that the accident had taken place. He stated that while the deceased was going on a cycle on the left side of the road, the truck in which he was sitting went from behind and knocked down the deceased and ran him over and it stopped at a distance of 70 to 80 feet from the place of accident leaving a skid mark of about 30 feet long. The fact that the driver was not able to control the truck within a reasonable distance shows that it was being driven at a high speed and there was rashness and negligence on the part of the driver. There can, therefore, be no escape from the vicarious liability of the owner for the act of the driver nor can the appellant-company with which the vehicle was admittedly insured against third party risk at the time of the accident avoid such liability,

8. This brings us to the question of quantum of damages to which the respondents 1 and 2 are entitled. It is not disputed that the deceased was aged about 52 years at the time of his death. The Tribunal held that the life of an average Indian is 70 years. Mr. P. Roy for the appellant relied on some reported cases in support of his contention that the life of an average Indian is 65 years. In my opinion, life expectation cannot be determined by precedents. Each case has to be decided on its own facts. It is in the evidence of P. W. 2 that the members of the deceased's family were generally long-lived. In view of the family history, the deceased can be normally expected to have lived up to 70 years if his life had not been cut short by the accident. The claimants produced a certificate from the Treasury Officer (Ext. 6) to show that the monthly income of the deceased from his business as a stamp vendor was Rs. 500/- approximately. The Tribunal determined the monthly income at Rs. 160/- observing that P. W. 2 had admitted in his evidence that the monthly income of the deceased was Rupees 160. This is clearly an error of record. On a careful scrutiny of the evidence of P.W. 2, it appears that he simply stated :--

"Every week my father was purchasing stamp worth Rs. 2,000 from the treasury and his monthly income was Rs. 250 on an average from sale of stamps."

In the absence of any evidence to the contrary, the monthly income of the deceased as a stamp vendor can be determined at Rs. 250 if not more.

9. P.W, 2 also stated that the deceased was earning Rs. 100 per month as the priest of two temples. He, however, admitted that his father was not getting any pay for acting as priest of the temples. He also admitted that he has succeeded

to the priesthood of his father in the two temples and has been, enjoying the lands of the temples attached to the priesthood. It cannot, therefore, be said that the claimants have sustained any pecuniary loss on this head.

10. P.W. 2 further stated that the deceased was earning Rs. 300 per month from cultivation of his lands. But in cross-examination he stated that the deceased was cultivating his lands by engaging field servants and after his death, the claimants have engaged field servants for cultivation of lands. There is, therefore, no pecuniary loss on this head.

11. The monthly income of the deceased is determined at Rs. 250. Having regard to the status of the deceased and his ordinary living requirements, it is reasonable to hold that he must have been spending Rs. 100 on himself and contributing the remaining Rs. 150 for support of the family. So the pecuniary loss caused to the family by the death of the deceased is Rs. 150 per month or Rs. 1,800 per year. For 18 years, i.e., the remaining span of life of the deceased it would come to Rs. 32,400. Having regard to the normal hazards of life and the fact that the amount is to be paid in lump sum instead of being spread over in instalments for over 18 years, it is reduced by one-sixth. The compensation would thus work out at Rs. 27,000.

12. The Tribunal committed an illegality in awarding interest on the amount of compensation from the date of accident. Section 110-CC of the Motor Vehicles Act makes a provision for the court, to allow interest at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf. In view of this provision, the Tribunal should not have granted interest from the date of accident. In a decision of this Court reported in ILR (1975) Cut 1072 (Chairman, Board of Directors, Orissa Mining Corporation Ltd. v. Koppala Kamala Dora) it was held that in such cases granting of interest should ordinarily be from the date of application. I would, therefore, in disagreement with the Tribunal, direct that compensation payable to respondents 1 and 2 shall carry interest at the rate of 6 p. c. p. a. from the date of application u/s 110-A, i.e., 23-11-73 till the date of payment,

13. In the result, the appeal be dismissed and the cross-objection be allowed in part. I direct that a sum of Rupees 27,000 (in place of Rs. 23,460 awarded by the Tribunal) be paid as compensation to respondents 1 and 2. This amount shall carry interest at the rate of 6 p. c. p. a. from 23-11-73 up to the date of payment. The respondents shall be entitled to the costs of the claim proceeding proportionate to their success. Parties to bear their own costs incurred in this Court