

(1993) 12 OHC CK 0001

In the Orissa High Court

Case No : Misc. Appeal No. 67 of 1989

The New India Assurance Company Ltd. and Another

APPELLANT

Vs

Saraswati Samanta Singhar and Others

RESPONDENT

Date of Decision : 24-12-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Motor Vehicles Act, 1988 — Section 173

Citation : (1995) ACJ 416 : (1994) 1 OLR 147

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : Deepak Misra and Anil Deo, for the Appellant; Pradip Mohanty and B.P. Ray, for the Respondent

Judgement

A. Pasayat, J.—In this appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as the "Old Act") corresponding to Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") the New India Assurance Company Limited (hereinafter referred to as the "insurer") and Shri Bijayananda Mohanty, the owner of a bus bearing registration No. OSP 2259 (hereinafter referred to as "insured") call in question legality of the judgment of Third Motor Accidents Claims Tribunal, Puri (in short, the "Tribunal").

2. The background facts giving rise to this appeal are as follows :

On 9-7-1983 Govind Chandra Samanta Singhar(hereinafter referred to as the "deceased") lost his life in an accident wherein the bus of the insured was involved. The deceased was going towards Pipili from Bhubaneswar, along with one Kailash Chandra Badajena in a scooter bearing registration No. ORX 5444. The scooter was being driven by Kailash, There was collision between the scooter and the bus and deceased lost his life. The legal representatives of the deceased, i. e, respondents 1 to 4 in this appeal, lodged a claim u/s 110-A of the old Act claiming a compensation of 4,75,000/. According to them, the deceased was a contractor aged about 38 years, getting about Rs. 1.800/ per month from such

business, in addition to Rs. 700/-per month earned from agricultural lands measuring 7 acres. On account of rash and negligent driving of the offending bus, the deceased who was a pillion rider lost his life. The monthly contribution of the deceased to the family was around Rs. 1,800/- per month. The owner contested the claim. According to him, the amount claimed was absolutely out of proportion. Similar plea was taken by insurer. The Tribunal framed seven issues. It is to be noticed here that no specific issue was framed relating to the income aspect. Issue Nos. 4, 5 and 6 which indirectly related to the income aspect of the deceased and the quantum of compensation are relevant for our purpose. However, issue No. 6 reads as follows :

"6. Are the petitioners entitled to get compensation ? If so, to what extent and from which opposite party ?"

This is wide enough to encompass the question of income of the deceased and the quantum of compensation. Referring to various documents filed by the claimants. " the Tribunal came to hold that the average monthly income of the deceased from contract work was Rs. 1500/- and Rs. 500/- from agriculture. Thus, the total income of the deceased was around Rs. 2000/- per month, out of which he was held to be contributing Rs. 1200/- for maintenance of the claimants. Accordingly the Tribunal worked out Rs. 3,24,000/- to be the loss of total income of the deceased. A further compensation of Rs. 16,000/-was awarded for funeral and post-funeral expenses. In all, a total compensation of Rs. 3,40,000/- was awarded.

3. The quantum award is primarily challenged by the appellants on the following grounds :

(i) The estimation of income from contract business is contrary to materials on record and the Tribunal has mis-interpreted the documents filed to come to hold that the deceased was earning about Rs. 1500/- per month from contract business.

(ii) So far as the agricultural income is concerned, there was no loss because the land continues to be in possession of the claimants, and therefore, the award of compensation for loss of income from agriculture is untenable.

(iii) The modality adopted by the Tribunal for assessing the compensation is erroneous. Moreover, huge sum of Rs. 16,000/- was awarded for funeral and post-funeral expenses.

4. The claimants-respondents have filed cross-appeal and prayed for enhancement of the quantum awarded. At the threshold objection has been raised by them to the maintainability of the appeal. According to them, a joint appeal at the behest of both the insurer and the insured is not maintainable. Additionally, the insured cannot be termed to be a person aggrieved and therefore, the appeal at his behest is also not maintainable.

5. I shall first deal with the question whether an insured can maintain an appeal.

For resolution of the dispute it is necessary to refer to Section 110-D of the old Act. The relevant portion of the said provision reads as follows :

"Appeals.-(1) Subject to the provisions of Sub-section (2), any person aggrieved by an award of Claims Tribunal may, within 90 days from the date of award, prefer an appeal to the High Court. xx xx xx"

The provision remains identical in Section 173 of the Act. The expression "person aggrieved" defies an exact definition. Its meaning varies with the context of statutes wherein it occurs and depends upon diverse and varied factors. Taking the word as it is understood in common parlance, a "person aggrieved" should include a person whose interests are prejudicially affected by a decision a person who has a genuine grievance that the decision has adversely hit him, and has denied something which was otherwise legally due to him and has deprived certain benefits due and/or has imposed some burden on him to be discharged which, but for the decision, he would not have been required to undertake. The Supreme Court in *Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashiir Ahmed* : AIR 1976 SC 578 observed as follows :

"The expression denotes an elastic and to an extent an elusive concept. It cannot be confined within the bounds of a rigid, exact and a comprehensive definition. At best its features can be described in a broad tentative manner, its scope and meaning depends upon diverse and variable factors such as content and intent of the statute, the nature and extent of the prejudice and injury suffered by him."

The expression "person aggrieved" was defined as under by James L. J. in *In Re. Sidebotham* : (1880) 14 Ch. D. 458:

"But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have " received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something."

The "person aggrieved" is a person who is given a right to raise a contest in a certain matter and his contention is negated. He is certainly aggrieved by the order disallowing his contention. Any person who makes an application to a Court for a decision, or any person who is brought before a Court to submit to a decision is, if the decision goes against him, thereby a "person aggrieved" by that decision. Persons whom the Court was bound to hear if they wished to be heard, on the validity of a case and the decision has been against them, it can be said that they are "persons aggrieved". It means a person injured or damaged in a legal sense; (See *Re Riviere* 26 Ch. D. 48. In *A. G. of the Gambia v. N. Jio* : (1961) ACJ 617, it was observed that the expression "person aggrieved" includes any person who has a genuine grievance because an order has been made prejudicially affecting his interests. It is apparent that the law-makers did visualise filing of appeal by aggrieved persons. The provisions cannot be

rendered otiose or an exercise in futility by saying that an insured cannot take advantage of it, as he is not a person aggrieved and the insurer, though an aggrieved person cannot challenge the award in its vital parts regarding accrual of liability to pay compensation and the quantum of compensation, however, arbitrary and unjustified the findings might be. The dire necessity of the situation demands necessity of hearing a person who alone can really make a grievance about the passing of award. In some cases it would amount to slamming of the door of the High Court to prohibit entry of the insurer or the insured. It may be a case where the insurer has been saddled with a huge sum on the basis of a patently absurd conclusion of the Tribunal. Fair-play in action demands a fair hearing of the insurer, whose rights to file appeal would really provide no remedy if it is denied the opportunity to assail the finding relating inter alia to the negligence of the driver and quantum of compensation. It is submitted that the right is limited. There cannot be any doubt about it. But the Court has a duty to unveil the overt designs and not to be a mute spectator to the perpetration of injustice. The legislature cannot be said to be unaware of the fact that an insurer may be ultimately made liable to satisfy an award though arbitrary, unreasonable and unjust because of the insurance coverage. In such a situation the insurer has to come forward to file an appeal and challenge the award in its vital respects, A similar view was expressed by a Division Bench of Assam High Court in Hemendra Dutta Choudhury v. Arun Kumar Bordoloi : 1988(2) ACJ 813. A Division Bench of this Court (to which I was a party) in The Oriental Insurance Company Limited v. Harapriya Nayak and Ors. (AHO No. 46 of 1993 disposed of on 5-11-1993) has also highlighted these aspects. If the assured and the Insured file a joint appeal, and the appeal by at least one of them is maintainable, the appeal would be heard: But if neither of them are found to be competent to file the appeal, the joint appeal would not be maintainable in law and would be liable to be dismissed. A similar view was expressed by the Calcutta High Court in Kantilal and Bros. and Another Vs. Ramarani Debi and Others, .

So far as insured's appeal is concerned, as observed by the Kerala High Court in K. R. Visalakshi v. Pookodan Hamza : 1989 ACJ 600, material deprivation is not essential. Assuming such an incident to be essential, even then the owner becomes a person aggrieved, as the award still deprives him of no claim bonus, which he would otherwise be entitled to get under the contract of insurance. For a just and fair decision between the parties on the question of liability, it must be held that the driver and the insured owner have a right of appeal u/s 110-D to challenge the award, if they dispute the finding of fault and consequent primary liability against them. Merely because the amount is passed on to somebody else, i.e., the insurer, it cannot be said that the insured is not a person aggrieved. In the view of the matter, the appeal is maintainable.

6. Coming to the income aspect, it is to be noticed that there is no dispute that the deceased was a contractor and was assessed to Income Tax. The contract licence of the deceased has been exhibited. It is, however, seen that the Tribunal committed faux pas by holding that for the assessment year 1985-86 a sum of

Rs. 3,540/- was deducted as income tax at source on the total income of Rs. 1,76,907/-. The sum of Rs. 1,76,907/- represented the total payments made to the deceased by the Food Corporation of India, Bhubaneswar for execution of contract work. However, from the various documents exhibited it is revealed that the Food Corporation of India had "entrusted contract works of various amounts to the deceased. In any event considering the total quantum of contract works executed and which were to be executed, the estimation of monthly income from contract business at Rs. 1500/- does not appear to be unreasonable.

7. The residual question is deprivation of income from agriculture. It is not in dispute that the property remained in tact. In the case of death of an agriculturist owning agricultural land, the value of the supervisory services of the deceased have to be first estimated. This will not be merely equivalent to the value of the services of a farm- servant or a manager of the property employed for that purpose. It will be more than that because an owner-manager takes extra care in increasing the income year by year, and also in increasing the value of the property. After thus estimating the special value of the supervisory services of an owner-manager, a deduction is to be made in respect of the money the deceased would have spent for himself out of such sum and then the annual contribution to the family is to be arrived at. The general practice of making automatic deductions for the value of property inherited has fallen into desuetude. These principles may be fully applicable in the case of agriculturists owning agricultural land. But in the case of a person who is engaged in other avocation, the extent of deprivation of income has to be considered. It is accepted by the learned counsel for the parties that unless there is deprivation, compensation cannot be awarded. However, the learned counsel for claimants has strenuously urged that the deceased was devoting time for agricultural sources and therefore, after his death some amount of reduction income is bound to have occurred. On consideration of the material on record, it is hard to believe that the deceased would have got sufficient time to devote for and look after the agricultural operations. He was carrying on contract works at Bhubaneswar, Even after the death of the deceased the property continued to yield income. However, there is no other major male member, in the family of the claimants, the eldest son being only eight years old at the time of accident. Obviously, therefore the claimants would have to depend on outsiders to look after the agricultural lands. Learned counsel for the claimants has highlighted evidence of PW 5. He has stated that the property of about 14 acres was in jointness. The deceased was looking after the agricultural and cultivation affairs. After deducting all expenses the deceased was giving him the paddy and rice and other cereals grown in the land worth Rs. 8000/- to Rs. 9000/- per year towards his share. He was also getting the same income from the land as his share, In his cross-examination he stated that he was separate in mess from the deceased but the cultivation was joint and they were getting total income of Rs. 16,000 to Rs. 13,000 from the lands annually. As indicated above, considering the nature. of business which was being carried on by the deceased it is hard to believe that he

was effectively looking after the cultivation affairs in respect of 14 acres of land. Therefore, the evidence of PW 5 is clearly unbelievable. Considering the extent of land and the supervision charges which would be required to be paid annually. I feel that the deprivation of income from agricultural land would be around Rs. 3,000/- which comes to Rs. 250/- per month. Therefore, the total deprivation per month so far as different sources of income of the deceased are concerned, comes to Rs. 1750/- per month. Considering the nature of business carried on by the deceased, and the fact that he was stationed at Bhubaneswar whereas, the claimants were staying in village at Kantia, the contribution can be fairly estimated at Rs. 1200/- per month, in other words Rs. 14,400/- per year. As such contribution determined by the Tribunal is maintained.

8. In support of the plea for enhancement, it is stated that the Tribunal has not taken note of the fact that the works allotted to the deceased for execution of contracts were in the neighbourhood of Rs. 8 lakhs. Reliance is placed for the purpose on Exts. 6, 7 and 8. The plea is not acceptable for the simple reason that there is no material to show the period during which the contract works were to be executed. That is related as the quantum of income is to be taken on annual basis. In that view of the matter, the income earned for the year immediately prior to the year in which death occurred is a safer basis for assessing the income. That aspect has been considered by me (supra), and therefore, the plea for enhancement fails.

9. Andhra Pradesh High Court in the case of Andhra Pradesh State Road Transport Corporation v. G. Ramaniah : 1988 ACJ 223, has illuminatively indicated the appropriate multiplier to be adopted in different cases. Considering the multiplier indicated in the said judgment, I feel a multiplier which would be slightly less than 14 would meet the ends of justice. Calculated on that basis the entitlement of the claimants comes to Rs. 2 lakhs. I find that the Tribunal has awarded Rs. 16,000/- for funeral and post-funeral expenses. The same shows non-application of mind by the Tribunal. In the claim petition, the claimants had claimed Rs. 5,000/- under the said head. Therefore the award is limited to that extent, i. e., 5,000/-.

10. The total entitlement of the claimants comes to Rs. 2,05,000/-. The Tribunal has stipulated a default rate of interest to be 12%, while the rate of interest in case of payment within three months was indicated to be 9%. In view of the Division Bench decision of this Court in Haripriya Nayak's case (supra), such stipulation is contrary to law. Considering the circumstances of the case, I feel that the interest "10% from the date of claim till realisation would be fair. Out of the total amount of award including interest 90% rounded to the nearest thousand shall be kept in fixed deposit at least for a period of six years in a nationalised bank and no loan or advance shall be granted against the fixed deposit without leave of the Tribunal. If, however, the Tribunal is satisfied that the same is pre-eminently warranted, on proper motion being made for the purpose of withdrawal of any sum from the fixed deposit, necessary orders shall

be passed in that regard. The amount of fixed deposit shall be made equally in the names of claimants. So far as claimants 2, 3 and 4 are concerned, they being minors, the fixed deposit shall be made in their names through their mother guardian Saraswati Samanta Singhar. The amount of costs awarded by the Tribunal is maintained.

In the circumstances, the appeal is allowed to the extent indicated above, and the cross-appeal filed by the claimants-respondents being without any merit is dismissed.