

(2008) 08 OHC CK 0144
In the Orissa High Court
Case No : M.A.C.A. No. 562 of 2004

The New India Assurance Company Ltd.	APPELLANT
Vs	
Makadama Sahoo and Others	RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 41 OCR 96

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Advocate : G.P. Dutta, for the Appellant; Sangam Kumar Sahoo, for the Respondent

Judgement

S.C. Parija, J.

Misc. Case No. 765 of 2008

1. This is an application for condonation of delay for 3 days in filing the appeal.
2. Heard.
3. Delay in filing the appeal is condoned..
4. Misc. Case is disposed of.

M.A.C.A. No. 562 of 2004

5. Though the matter was listed for orders with the consent of the parties, the same is being taken up for final disposal.

6. This appeal u/s 173 of the Motor Vehicles Act, 1988, has been filed by the Insurance Company challenging the judgment/award dated 30.06.2004, passed by the 5th Motor Accident Claims Tribunal, Nayagarh in MAC. No. 15 of 2000, awarding an amount of Rs. 1,32,300/- as compensation along with interest @ 9% per annum.

7. Sri G.P. Dutta, Learned Counsel for the Insurance Company submits that the learned Tribunal erred in passing the impugned award against the present Appellant, on the finding that the driver of the offending bus was rash and negligent in causing the accident, when no materials were available on record to come to such a conclusion. It is further submitted that as the charge-sheet submitted by the police clearly established that the accident took place due to the contributory negligence of the drivers of bus as well as taxi, as stated in the said charge sheet (Ext.4), the impugned award fixing the entire liability on the present Appellant is improper and illegal. In this regard, it is submitted that the charge-sheet which has been marked as Ext. 4, without any objection from the claimants, was a valid piece of evidence, which clearly established that both the vehicles involved in the accident were being driven in a rash and negligent manner, which resulted in the accident. Accordingly it is submitted that the compensation amount awarded, should have been apportioned between the insurer of the bus and the insurer of the taxi, in view of the findings of contributory negligence by the driver of both the vehicles in the charge-sheet.

8. It is further submitted that the computation of the compensation amount by the learned Tribunal taking the monthly wage of the deceased at Rs. 1,200/- per month is highly excessive and the imposition of interest on the compensation amount @ 9% per annum is unjust, improper and illegal.

9. On a perusal of the impugned award it is seen that the learned Tribunal under Issue No. 1, has discussed in detailed the documentary and oral evidence adduced by the claimants in support of their plea that the driver of the offending bus was rash and negligent in causing the accident. The learned Tribunal on the basis of evidence of P.W. 1, who was one of the occupant of the taxi, came to find that the offending bus, coming from the opposite direction, i.e. from the side of Khurda, was being driven at a high speed and was overloaded by passengers and had dashed against the taxi. The said occurrence witness (P.W. 1) in his evidence categorically stated that the driver of the taxi, seeing the offending bus coming in a high speed slowed down the speed and parked the taxi on the left side of the road. He had further stated in his evidence that he was sitting by the side of the driver and the deceased Basanta Kumari Sahoo was sitting on the back seat towards the right side. The deceased died then and there at the spot. The driver of the taxi died on his way to hospital. In the cross-examination the said P.W. 1 explained that he saw the offending bus from a distance of 50 feet and seeing the bus coming at a high speed, the driver of the taxi slowed down the speed and stopped the taxi on the extreme left side of the road. The claimant, Respondent No. 1 examined himself as P.W. 2 and corroborated the evidence of P.W. 1. Admittedly the said Respondent No. 1 had hired the taxi and he was travelling with his family members at the time of accident.

10. The learned Tribunal considered the oral and documentary evidence produced by the claimant including the charge-sheet filed in G.R. Case No. 147 of 2000 against the driver of the offending bus and also took into consideration the

pleading of the present Appellant that the accident occurred due to contributory negligence of the drivers of both the vehicles and that the Appellant is not liable to pay the entire compensation amount. Learned Tribunal came to hold that in absence of any specific plea by the Appellant relating to contributory negligence and there being no evidence on record to establish such plea and in view of the evidence of P. Ws. 1 and 2, the accident occurred due to rash and negligent driving of the driver of the offending bus.

11. Sri S.K. Sahoo, Learned Counsel for the claimants submits that the charge sheet submitted by the police cannot be the basis for the learned Tribunal to pass award of compensation under the M.V. Act. Moreover, as a factum of accident has been elaborately proved by the claimants before the learned Tribunal and there being no material to the contrary, the learned Tribunal rightly held that the driver of the offending bus was responsible for the accident. Accordingly it is submitted that there is no perversity in the impugned award so as to warrant any interference in this appeal.

12. Considering the findings of the learned Tribunal as given in the impugned award and the reasons assigned therein in support of the same, no impropriety or illegality can be said to have been committed by the learned Tribunal so as to warrant any interference by this Court. However, keeping in view the quantum of compensation awarded and the basis on which the same has been arrived at, the awarded compensation amount of Rs. 1,32,300/- is modified and reduced to Rs. 1,25,000/-. The interest imposed on the compensation amount @ 9% per annum is also modified and reduced to interest @ 7.5% per annum. Accordingly, the claimants are entitled to compensation of Rs. 1,25,000/- along with interest @ 7.5% per annum. The impugned award is modified to the said extent.

13. Learned Counsel for the Insurance Company undertakes to deposit the modified compensation amount of Rs. 1,25,000/- along with interest @ 7.5% per annum with the learned Tribunal within 6 weeks from today. On such deposit being made the same shall be disbursed to the claimants proportionately as per the direction of the learned Tribunal, given in the impugned award.

14. The statutory amount deposited before the Registry of this Court shall be refunded to the Insurance Company along with accrued interest thereon on production of receipt of the deposit of the modified compensation amount before the learned Tribunal.

15. The MACA. is accordingly disposed of.

16. MACA disposed of.