
(1975) 11 OHC CK 0022
In the Orissa High Court
Case No : M.A. No. 164 of 1973

The Orissa Cooperative Insurance Society Ltd.

APPELLANT

Vs

Ranjan Kumar Garabaru and Another

RESPONDENT

Date of Decision : 21-11-1975

Acts Referred:

Motor Vehicles Act, 1988 — Section 110C(2A), 96, 96(2)

Citation : (1976) ACJ 21

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : P. Roy, for the Appellant; A.K. Mohanty and G.P. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Ray, J.—The insurer against the award of the Motor Accidents Claims Tribunal, Puri awarding Rs. 36,000/- to the injured claimant is the Appellant in this appeal.

2. The case of the claimant before the Tribunal was as follows:

On 24.8.71 the claimant was coming from the eastern side of the road and was proceeding to its western side near a residential house which was situated at the old Bhubaneswar Town. When he was so passing, the public service bus bearing registration No. ORP 894 was coming from the Capital side on the north and was proceeding towards Lingaraj temple on the south. The driver of the bus was drunk and had absolutely no control over the vehicle as it was moving in a high speed. At the place of the accident the road was 50 feet wide and straight and the spot was clearly visible from a long distance as there was no traffic obstruction at that time. As the driver was not mindful the bus dashed against the claimant. After the accident the claimant fell down and the right wheel of the vehicle ran over his left hand. As a result of this the claimant received multiple injuries and his left hand was smashed to pieces. Immediately he was carried to

the Capital Hospital where he was treated till 13. 6. 71 and ultimately his left hand was amputated. Even after his discharge from the hospital the treatment continued, the driver was proceeded against in a criminal case for his rash and negligent driving. The claimant was healthy and was an intelligent boy. On account of amputation of his; hand he became invalid and his future was completely doomed. He was permanently debarred from taking up his future studies and lost all prospects of marriage. His parents were greatly shocked by this accident. He was, therefore, entitled to a consolidated sum of Rs. 60,000/- as compensation.

3. The defence of opposite party No. 1, the owner of the public bus, was as follows:

Opposite party No. 1, while denying all the allegations in the claim petition levelled against the driver of the bus, specifically pleaded that at the time of the accident the vehicle was coming from the north to the south at a reasonable speed of about 15 miles per hour and the road was then free of any other vehicle. There were residential houses on both sides of the road where the accident took place and as such the driver was driving the vehicle cautiously by blowing horn every now and then. Just at the place of accident the claimant boy came out suddenly rushing from a house by the side of the road. He rushed from the western side of the road and intended to cross it in a right angle. As soon as the driver got the glimpse of the running boy he tried to avoid collision by swerving the vehicle to the extreme left and applied the brake. He also blew horn in order to attract the attention of the rushing boy. The vehicle then stopped at a distance of 20 feet. As the boy was unmindful and was rushing at a speed he could not check himself and collided with the right side mudguard of the bus. After collision the boy fell down on the road and none of the wheels of the bus ran over any part of his body. The driver then got down from the vehicle to see what harm had been caused. Just at that time suddenly about 50 to 100 people gathered at the spot and tried to assault the driver. The driver being afraid of his life tried to escape and by that time the angry mob caused damage to the bus. While trying to escape the mob the right side wheel of the bus might have ran over the arm of the boy who was lying near the bus on the road. But the driver could not escape and the bus ultimately stopped at a distance of 100 feet from the place of accident. The driver was severely manhandled. Thereafter, the police arrived and dispersed the mob. So, the accident was not on account of the fault of the driver but was entirely due to the fault of the claimant. The owner of the bus had therefore no obligation to pay any compensation.

4. The Appellant insurer filed a separate written statement before the Tribunal. In the written statement it was alleged that the vehicle which caused the accident had not been insured with the insurer; that the claim was barred by limitation and was high and excessive and that the allegations in the claim petition regarding the manner in which the accident took place were not true. In substance, the Appellant took the stand that the accident was not on account of

the negligence of the driver.

5. The Tribunal by applying the principle of *res ipsa loquitur* and after a thorough discussion of the evidence led by the parties has found that the accident was the result of rash and negligent driving on the part of the driver of the vehicle. This finding is not challenged before me by the Appellant.

6. Mr. P. Roy, learned Counsel for the Appellant, only challenges the quantum of damages. u/s 96(2) of the Motor Vehicles Act, the statute has laid down in clear terms the defence which is available to an insurer. Therefore, the Appellant cannot be permitted to take a defence which is not provided for in the statute. Within the four corners of the provision u/s 96 of the Act there is nothing which would permit an insurer to challenge the quantum of damages.

There are only two exceptions to the aforesaid provision prescribing the defence available to an insurer. They are:

1. Where the terms of the policy provide that the insurer can take any defence available to the assured in the name of the assured; and

2. Where the assured does not contest the claim or is found to be colluding with the claimant, the insurer can take any defence available to the assured with permission of the Tribunal which has to record its reasons while granting such permission. In the present case, none of the conditions has been satisfied. Even though the policy provides that the insurer can take all possible defences available to the assured in the name of the assured, the records in the case show that both the assured and the insurer filed their respective objections before the Tribunal separately and the assured who was opposite party No. 1 before the Tribunal examined one witness on his (opposite party No. 1) behalf. In these circumstances, it cannot be said that any of the conditions laid down in the Act has been satisfied in order to enable the present Appellant to take a defence open to the assured. My ultimate conclusion therefore is that it is not open to the present Appellant to challenge the award of the Tribunal in this appeal on the ground that the quantum of damages awarded under the impugned award is high and excessive. I am supported in my view by a decision reported in *Northern India General Ins. Co. Ltd. v. L. Krishnan* 1972 A.C.J. 420 in which their Lordships of the High Court of Mysore in paragraph-? of their judgment have observed as follows:

From the above decision it is clear that insurer can urge all the defences open to the insured, only when the insurer defends the action in the name of the insured. But in the present case it has not been shown that before the Tribunal the Appellant defended the action in the name of the insured. On the other hand, the insured (the owner of the lorry) and the driver of the lorry who were Respondents-1 and 2 before the Tribunal, had filed their objections and the Appellant had filed a separate statement of objections. Unless the Appellant had defended before the Tribunal, the action in the name of the insured the only defences which it (the Appellant) could urge in this appeal are those specified in

clauses (a) to (c) of Sub-section (2) of Section 96 of the Act.

At another place of the judgment in the aforesaid decision their Lordships have said that when the conditions laid down in Section 110 C (2-A) of the Motor Vehicles Act are not satisfied the insurer cannot contest the claim on any ground other than those specified in Clauses (a) to (c) of Sub-section (2) of Section 96 of the Act. Their Lordships have further held in the case before them that there was absolutely no material to infer collusion, that the owner and the driver of the lorry who were Respondents 1 and 2 before the Tribunal had filed their objections to the claim petition and had resisted the claim separately and that the driver of the lorry had given evidence to the effect that the accident was not due to his negligence. In these circumstances, their Lordships said that it would be futile to contend that the person against whom the claim was made failed to contest the claim or that there was collusion between the claimant and the insured. After having said as stated above, their Lordships did not permit the insurer Appellant to press his appeal either on the ground that there was no negligence on the part of driver or that the amount of compensation awarded by the Tribunal was excessive. The aforesaid decision directly applies to the present case.

7. That apart, on merit also, I do not find that the quantum of damages awarded by the Tribunal is high and excessive. The claimant before the Tribunal who himself was injured was only 7 years old when he met with the accident. On account of the injuries sustained by him his left hand was amputated. The boy thus became practically invalid for his whole life. The Tribunal has taken normal expectancy of the boy to be 57 years only which is rather very low. The boy being 7 years old at the time of the accident the Tribunal has calculated damages at the rate of Rs. 75/- per month for fifty years which is a modest estimate in view of the present prevailing circumstances. Since the Tribunal has fixed the expectancy of life of the injured at 57 years only and has awarded damages at the rate of Rs. 75/- per month it would not be proper to reduce the quantum on account of lump sum payment and on other account as contended by Mr. Roy. Mr. A. K. Mohanty, learned Counsel for the Respondent to meet the points raised by Mr. Roy argues on the authority of the two decisions reported in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, and in *Union of India (UOI) Vs. Varadambal and Others* that unless the award of the Tribunal appears to be arbitrary it should not be interfered with by an appellate court. The relevant passage from the decision reported in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, is extracted below:

The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables the assessment made by the High Court can not be considered to be unreasonable and we do not think it to be unreasonable; it will not be proper for this Court to interfere with the same. Taking an overall assessment of the facts and circumstances of this case, we are unable to agree with the contention of the Appellants' Counsel that the compensation awarded to the legal representatives of the deceased persons is

excessive.

The Madras High Court in the decision reported in Union of India (UOI) Vs. Varadambal and Others has observed as follows:

But another principle in such cases is that the appellate court should not interfere merely because its own estimation happens to differ slightly from that of the trial court. In this view of the matter I do not think it will be right for me to reduce the sum of Rs. 12,000/- awarded by the Tribunal. The appeal is accordingly dismissed, but without costs.

So, taking all the facts and circumstances of the case into consideration, even if it is held that the Appellant in the present case can challenge the quantum of damages awarded by the Tribunal, I do not feel that it is a case where it can be said that the quantum of damages awarded is heavy, excessive and unreasonable.

8. For the reasons stated above I hold that this appeal has no merit and is accordingly dismissed. The Respondent shall be entitled to his costs of this appeal. Hearing fee is assessed at Rs. 50.00.