

(2008) 01 OHC CK 0014
In the Orissa High Court
Case No : M.A. No. 73 of 2000

United India Insurance Co. Ltd.

APPELLANT

Vs

Dandashi Pradhan and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173, 174

Citation : (2008) CLT 1075 (Suppl CrI) : (2008) 1 OLR 545 Supp : (2008) OLR 1075 (Suppl CrI)

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Advocate : Ajaya Cu. Mohanty, M.C. Nayak and A.C. Dey, for the Appellant; M.R. Mishra, R.K. Mohanty, N.C. Rout, S. Biswal, S. Padhi, N. Ratha, S. Lal, A. Rout, A. Padhi, J.K. Behera and, A.K. Mohapatra and M.R. Routray, for Respondent 1 and 2, for the Respondent

Judgement

B.N. Mahapatra, J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter called as the Act) filed by the Insurance Company against an award dated 17.5.1999 passed by the 2nd Motor Accident Claims Tribunal, (hereinafter called as the "Tribunal") Berhampur (Gm), in M.A.C. No. 183/97 (304/95).

2. The facts of the case as stated by the claimants are that on 22.6.1995 at about 4.00 P.M. near Nirmaljar while deceased, Krishna Pradhan was returning from Khallikote to his village Bharasa on a bicycle on the left side of the road, an Auto rickshaw bearing Registration No. OR-07A 6247 being driven in a rash and negligent manner came from Kodala side and dashed against him causing severe injuries on his person. He was taken to M.K.C.G. Medical College Hospital Berhampur, for treatment where he succumbed to the injuries on 23.6.1995.

3. Since the deceased was a bachelor, the parents of the deceased filed an application before the Tribunal claiming compensation of Rs. 3,00,000/- from the Insurance Company as well as the owner of the vehicle.

4. The owner of the vehicle contested the case and filed, written statement

denying the allegations made by the claimants.

5. The Insurance Company also filed its written statement denying the allegations made by the claimants. The plea of the Insurance Company was that since the driver of the offending vehicle was having Learner's License the Insurance Company was not liable to pay any compensation.

6. On the above pleadings the Tribunal framed four issues.

7. The claimants examined two witnesses and produced ten documents which are marked as Exts. 1 to 10. Nobody was examined by the Respondents. Respondent No. 2 produced two documents which are marked as Exts. A and B.

8. After considering the oral as well as the documentary evidence and rival contentions of the parties, the learned Tribunal came to the conclusion that due to the rash and negligent driving of the driver of the offending vehicle, the accident was caused and in that accident the deceased succumbed to the injuries. The learned Tribunal further held that the deceased was running a grocery shop during the relevant time and from the said business he was earning daily income of Rs. 35/-. On this basis the learned Tribunal determined the annual contribution of the deceased to his family at Rs. 8,400/-. Taking into consideration the age of the claimants, the learned Tribunal applied multiplier of 15 and determined the dependency at Rs. 1,26,000/-. Besides the above compensation, the Tribunal also awarded Rs. 1,500/- towards treatment, Rs. 1,000/- towards transportation, Rs. 2,000/- towards "Sudhi Kriya", Rs. 15,000/- towards love and affection and Rs. 150/- towards the damage caused to the cycle. In total, the Tribunal fixed compensation at Rs. 1,46,000/-.

9. The learned Tribunal further came to the conclusion that it was doubtful whether the driving license was valid or not during the relevant time. However, relying on certain judgments of the Hon'ble Supreme Court and the High Court, the learned Tribunal held that the Insurance Company would initially pay the compensation amount to the claimants and then realize the same from the owner of the offending vehicle. With the above observations, the Tribunal passed the following order:

That the Misc. Case is allowed in part on contest with cost of Rs. 500/- (Rupees Five hundred). The Reinsurance Co. initially to pay a sum of Rs. 1,46,000/- (Rupees One lakh forty six thousand) to the Petitioners with interest @9% per annum from the date of application i.e., 10.7.95 till realization and thereafter they will realize the same u/s 174 M.V. Act from the Rule 1-owner. If the Rule 2 fails to pay the same within a period of thirty days hence, it shall be liable to pay interest @ 15% per annum thereafter till realization.

It is further ordered that out of the above amount of compensation, a sum of Rs. 40,000/- (Rupees forty thousand) each be kept in fixed deposit in the names of each Petitioners in any Nationalized Bank for a period of six years monthly interest being payable to them regularly. The Bank shall not allow any loan to be

raised on these deposits treating the same as security nor it shall allow any premature payment of the same. The balance amount with interest and cost be equally paid to the Petitioners. Separate cheques be issued accordingly.

10. Learned Counsel appearing on behalf of the Insurance Company basically challenges the multiplier applied by the learned Tribunal. He submits that since the Tribunal assessed the age of the father of the deceased at 60 years, the application of 15 multiplier is against the guidelines prescribed in Schedule-II of the Act. According to him multiplier of 8 is applicable where the deceased is a bachelor and the age of the father of the deceased is 60 years. He further submits that since during the relevant time the driver of the offending vehicle did not have valid and effective driving license, the Insurance Company should be granted the benefit of right of recovery of the amount that would be paid by it to the claimants from the owner of the vehicle. His further submission is that the Tribunal has erred in awarding interest at the rate of 9% from the date of application till realization of the amount with further condition that if the Insurance Company would fail to pay the amount within a period of thirty days it shall be liable to pay interest at the rate of 15% till realization.

11. Per contra, the learned Counsel appearing on behalf of the claimant-Respondents argued that the age of the mother having been assessed between 40 to 45 years, by the learned Tribunal it has rightly applied multiplier of 15. He relies paragraph-6(ii) of the order of the learned Tribunal. For better appreciation of the fact, it is necessary to quote paragraph 6(ii) of the said order. The observation made by the learned Tribunal in paragraph 6(ii) of the order is set out below:

According to the claim petition the Petitioner No. 1 is 45 years and Petitioner No. 2 is aged about 42 years. The Petitioner No. 1 has stated in his evidence in the year 1998 that he is 50 years. But the Tribunal assessed his age to be 60 years. There is no other evidence adduced by the Petitioners showing their ages. However the age of the Petitioner No. 2 has been mentioned in the claim petition to be 42 years. Nothing has been challenged about her age. So I assess her age to be 40 to 45 years. So u/s 163-A 2nd schedule a multiplier of 15 years is applicable to this case. Applying 15 multiplier the total dependency comes to Rs. 1,26,000/-." The learned Counsel for the claimant-Respondents further submits that the learned Tribunal has rightly awarded the interest in accordance with law.

12. It appears from the above observation made by the learned Tribunal that it has assessed the age of the father at 60 years and the age of the mother as 40 to 45 years and applied 15 multiplier. The learned Tribunal has not assigned any basis for assessing the age of the father of the deceased at 60 years. The learned Tribunal applied 15 multiplier taking into consideration the age of the mother which it has assessed as 40-45 years. In case of death of a bachelor, the age of the mother or father whichever is less should be taken into consideration for the purpose of determining the amount of just compensation. In the present case the learned Tribunal has rightly taken the age of mother which is lesser than

the father for determination of just compensation.

13. However, it is further submitted by the learned Counsel for the parties that keeping in view the manner and spirit in which the motor accident claim cases are disposed of in the Lok Adalat, this appeal may be disposed of accordingly.

14. Considering the facts and circumstances of the case and the contentions of the parties, I am of the view that a compensation of Rs. 1,40,000/- would be just and proper in the present case. With regard to the interest, the same is reduced to 7½%. In view of the above, the Insurance Company is directed to pay a sum of Rs. 1,40,000/- (Rupees one lakh forty thousand) to the claimant-Respondents towards compensation along with interest at the rate of 7½% from the date of claim application i.e. 10.7.1995 till the date of deposit before the Tribunal. The entire amount shall be deposited by the Insurance Company before the Tribunal within a period of six weeks from the date of receipt of this order. After the said revised amount is deposited before the learned Tribunal as indicated above, the same shall be disbursed in favour of the claimant-Respondents in the same manner as it had been directed earlier by the learned Tribunal in its award.

15. However, it appears from the order of the learned Tribunal that the offending vehicle was insured with the Insurance Company and it was valid at the time of accident. In view of the same, the Insurance Company is liable to pay compensation to the claimants. It is the insurance Company's claim that during the relevant time the driver of the offending vehicle did not have any valid driving license. However, the learned Tribunal held that the insurance Company failed to prove the same. The relevant portion of the finding of the learned Tribunal-is quoted below:

...The main contention of the learned advocate for the Rule 2 is that the accused driver had no valid D.L. at the time of accident. It is submitted that as per Ext. A the R.T.A., Chatrapaur has intimated the Rule 2 that learners licence No. 5522/94, dt.9.12.94, as per their letter No. 034300 dated 17.8.98 no reference is available in their office as learner's licence is valid for six months only. There is no reference on record that the D.L. No. 5522/94 was a learner's licence. It is not understood from where the Rule 2 has got the fact that the seized D.L. was a learner's licence, Further more the seizure list and charge-sheet do not disclose that the D.L. seized from the possession of the accused driver was a learner's licence. As such the story created by the Rule 2 that the seized licence is a learner's licence based on no fact. It is perhaps the creation of the Rule 2 of its own. Unless it is proved that the seized licence is a learner's licence then reference obtained from the RTA Office cannot be relied upon the R.T.A. in his letter as per Ext. A has not intimated that the above licence is a learner's licence. On the other hand, the Petitioners have filed Ext.10 the D.L. of the accused driver which discloses that he has got D.L. since 1977-78. But it was not renewed from 10.7.89 at Cuttack. It is perhaps the accused driver might have got Anr. D.L. which was seized by the I.O. but that D.L. was a learner's licence, there is no material. Law is well settled that it is the duty of the Insurance Co., to

prove that alleged D.L. was invalid. The onus lies on them. In this case the R.T.A., Chatrapur has not been examined. So his letter Ext.A cannot be relied in evidence. Further more the letter itself also does not disclose that the licence referred was a learner's licence. Under these circumstances the Rule 2 has failed to prove that the accused driver had no valid D.L. at the time of accident. The police papers disclose that the seized D.L. No. 5522/94 was valid for which the accused driver has not been prosecuted for driving the vehicle without valid D.L. In this regard reference can be made to the citation reported in C.L.T. 1992 Note-30, Page 21. However, the D.L. filed by the Petitioners vide Ext. 10 discloses that it was not renewed since long. Under this circumstances it is doubtful whether the D.L. was valid or not.

In that view of the matter, this Court directs that the Insurance Company shall first deposit the compensation amount along with interest as indicated above before the learned Tribunal and, thereafter, if so advised it may make an application before the learned Tribunal to adjudicate the issue regarding the driving license of the driver of the offending vehicle. If such an application is filed by the Insurance Company, the learned Tribunal shall deal with the matter in accordance with law. However, this Court makes it clear that soon after the awarded amount is deposited by the Insurance Company with the learned Tribunal, the learned Tribunal shall disburse the said amount to the claimants as indicated above without waiting for finalization of the inter se dispute between the Insurance Company and the owner of the vehicle.

16. The learned Counsel appearing for the Insurance Company further submits that pursuant to Court's Order No. 6 dated 15.9.2006 the Insurance Company has already deposited a sum of Rs. 2,94,901/- before the Certificate Officer, Bhubaneswar, for stay of Certificate proceeding which should be refunded to it.

This Court therefore directs that on production of a receipt showing payment of compensation amount with interest as indicated above before the learned Tribunal, the Certificate Officer, shall refund the said amount to the Insurance Company with interest, if any.

17. Further it appears that during the pendency of the appeal a sum of Rs. 25,000/- was deposited before this Court towards statutory deposit and the same has been kept in a fixed deposit. It is directed that the said amount along with interest accrued thereon shall also be refunded to the Appellant Insurance Company on production of a receipt before the Registrar (Judicial) of this Court showing deposit of the compensation amount with interest before the Tribunal as directed above by this Court.

With the above direction, the appeal is allowed in part.