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(1997) 03 OHC CK 0007

In the Orissa High Court

United India Insurance Co. Ltd. — APPELLANT

Vs

Dura Tendia and Others — RESPONDENT

Date of Decision : 06-03-1997

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (1997) 2 ACC 307 : (1997) 83 CLT 800

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

Bench : Single Bench

Judgement

P.K. Misra, J.—In this appeal u/s 173 of the Motor Vehicles Act, 1988, the Insurer has challenged the legality of the award of Rs. 90,000/- passed by the Second Motor Accident Claims Tribunal, Northern Division, Sambalpur, mainly on the ground that the owner of the vehicle involved in the alleged accident had not been impleaded as a party.

2. Deceased Gunamanj was going towards Godabhanga on 16.11.1991 on a bi-cycle on Sambalpur-Bargarh road. The truck bearing registration number MSR 8569 came from the opposite direction and dashed against the deceased from the front-side as a result of which the deceased sustained several injuries and died on the spot. The claim application was filed by the mother, wife and two brothers of the deceased claiming Rs. 1,50,000/- as compensation. In the said claim case, present respondent No. 5 was impleaded as opposite party No. 1, whereas the present appellant was impleaded as opposite party No. 2. On consideration of the evidence on record, the Claims Tribunal held that the accident occurred due to negligence of the truck driver and further held that claimants 1 and 2, that is to say, the mother and the widow of the deceased, are entitled to a sum of Rs. 90,000/ as compensation. Asthetruck in question had been insured with the present appellant at the relevant time, the Tribunal directed that the entire amount should be paid by the Insurance Company.

3. Referring to Ext. A, the xerox copy of the Cover Note, which had been marked without objection, it is submitted on behalf of the appellant that, in fact, the

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policy had been issued in the name of K.C. Sharma. It is further submitted that in the absence of K.C. Sharma as a party before the Tribunal, the claim application was not maintainable. The learned Counsel for the appellant, therefore, submitted that the matter may be remanded to the Claims Tribunal for fresh disposal after impleading K.C. Sharma as a party.

Faced with the prospect of a prolonged trial after remand, the learned Counsel for the claimant-respondents submitted that the matter may be finalised in this Court and if need be, the amount awarded may be suitably reduced.

4. Keeping in view the aforesaid submissions of Counsels for both parties and keeping in view the evidence relating to the income of the deceased and his age at the time of accident. It was suggested by me in course of hearing that a sum of Rs. 80,000/- may be paid to the claimant-respondents so that a further prolonged trial can be avoided by both parties. The Counsels for both parties did not have serious objection to such proposal and accordingly, I modify the award and direct that a sum of Rs. 80,000/- is to be paid to the claimant-respondents 1 & 2 who are respectively the mother and widow of the deceased. It is apparent from the record that a sum of Rs. 25,000/- has already been deposited by the appellant which has been kept in a fixed deposit. The aforesaid amount of Rs. 25,000/- with accrued interest is to be paid to respondents 1 and 2 in the proportion of 1 : 3. Besides, the appellant should pay further sum of Rs. 55,000/- out of which Rs. 15,000/- is to be kept in fixed deposit for five years in the name of respondent No. 1 and Rs. 40,000/- is to be kept in fixed deposit for five years in the same of respondent No. 2. The aforesaid amount of Rs. 55,000/- should be deposited by the appellant before the Claims Tribunal within a period of two months from the date of judgment. If the amount is not deposited within a period of two months, the same shall become payable with ten percent interest from the date of the claim application.

5. The appeal is allowed in part subject to the aforesaid direction. There will be no order as to costs in any of the Courts.

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