
(2007) 12 OHC CK 0036
In the Orissa High Court
Case No : M.A.C.A. No. 895 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Prafulla Chandra Dwibedy and Others

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 171, 173

Citation : (2008) CLT 739 (Suppl CrI) : (2008) 1 OLR 429 Supp : (2008) OLR 739 (Suppl CrI)

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

Bench : Single Bench

Advocate : A.K. Mohanty, M.C. Nayak and D.C. Dey, for the Appellant; B.C. Mohanty B.K. Behera for Rs. 1 and 2, D.K. Sahoo, for Respondent 1 and B.B. Routray for R-3, for the Respondent

Judgement

B.N. Mahapatra, J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"), filed by the Insurance Company challenging the award dated 18.6.2003 passed by the 2nd Motor Accident Claims Tribunal, Northern Division, Sambalpur, in Misc. (A) Case No. 5 of 1994.

2. The facts of the case are that on 16.9.1993 at about 5.30 P.M. while the deceased was coming from Nalco side towards Angul with his scooter one Truck bearing Registration No. OSS-1261 came from the opposite direction and dashed against the scooter, as a result of which the deceased fell down and sustained grievous injuries. The deceased was immediately taken to Angul S.D. Hospital and thereafter he was shifted to S.C.B. Medical College Hospital, Cuttack, for treatment. On 19.9.1993, the deceased died in the said hospital.

3. The claimants who are the parents of the deceased filed a claim petition before the learned Tribunal claiming a sum of Rs. 12,00,000/- as compensation.

The allegations of the claimants were that the accident occurred due to the rash and negligent driving of the driver of the offending truck. The vehicle was duly

insured with the Insurance Company. The driver had effective and valid driving license during the relevant time. The deceased died at the age of 26 years. He was working as Grade-I operator in Nalco and was getting a sum of Rs. 6,000/- as salary per month. On the above basis, they claimed compensation of Rs. 12,00,000/- for loss of estate, dependency, love affection and care, mental agony, shock, medical expenses, conveyance charge and funeral expenditure etc. with interest and cost of the proceeding.

Their further claim was that both the Insurance Company and the owner of the vehicle are jointly and severally liable to pay the compensation.

4. The owner of the vehicle was set ex parte before the Tribunal.

5. The Insurance Company filed its written statement denying such accident involving the offending truck and death of the deceased out of the said accident. The further case of the Insurance Company was that at the time of accident the deceased had no valid driving licence to drive the scooter. He had not worn helmet for which he sustained head injury out of his own negligence and there was least negligence on the part of the driver of the truck. The driver of the truck had also no valid driving licence to drive the vehicle. Although the truck was validly insured with them for the violation of the policy condition, they were not liable to pay the compensation. Basing on the above pleadings, the Tribunal framed the following four issues:

(1) Whether on the alleged date 16.9.93 the accident occurred for the rash and negligent driving of the driver of the offending truck bearing No. OSS 1261 near village Turunga on N.H. 42 by dashing to the scooterist Sanjaya Kumar Dwibedy causing his death?

(2) Whether for the rash and negligent driving of the scooter by the deceased he met such accident?

(3) Whether the driver of the truck and the deceased had valid D.L. to drive their respective vehicle?

(4) Whether the applicants are entitled to compensation and if so, to what extent and from whom?

6. In course of hearing before the learned Tribunal, the claimants examined two witnesses. Though the witnesses were cross-examined nothing substantial had been elicited to discredit their version. The claimants produced six documents which are marked as Ext. 1 to Ext. 6. After analyzing the evidence of A.W.2 and documentary evidence like F.I.R., Ext. 1; Charge sheet, Ext. 2 and the post mortem report, Ext. 3, the learned Tribunal held that the deceased met with an accident involving the offending truck and died in such accident.

The opposite party No. 2 examined one witness. It produced two documents which are marked as Ext. A and Ext. B.

Although the Insurance Company took the plea of contributory negligence of the

deceased in meeting the accident if failed to prove the same by adducing any evidence. Even the driver of the offending truck was not examined by the Insurance Company to prove its case. The learned Tribunal also held that due to rash and negligent driving of the driver of the truck the accident occurred and in the said accident the deceased died. The further finding of the Tribunal is that the seizure lists marked as Exts. 5 and 5/1 clearly showed that the driver of the offending truck had valid driving license bearing No. 570/82 Koraput HMV and he was competent to drive the offending truck. The seizure list marked as Ext. 5/2 also showed that the deceased had valid license to drive the scooter. However, the learned Tribunal held that A.W. No. 1, the father of the deceased, who retired from the service in 1999 as Inspector of Police could not be held to be a dependent on the income of the deceased and, therefore, was not entitled to get any compensation for loss of dependency on the death of the deceased, it further held that A.W.2, the mother of the deceased, could be held to be the dependent on the income of the deceased partially but both the applicants were entitled to get compensation for the loss of estate.

Taking into consideration the salary of the deceased at Rs. 6,000/- and the age of A.W. 2, the learned Tribunal applied 6 multiplier to assess the just compensation and held that the claimants were entitled to get compensation of Rs. 3,28,000/-. The learned Tribunal has also held that the Insurance Company was liable to pay the compensation since the offending vehicle was insured with the Insurance Company and the driver of the offending vehicle had valid and effective license to drive the same at the time of accident. With the above observation, the Tribunal directed the Insurance Company to pay the said compensation within a period of two months from the date of order failing which the Insurance Company should pay the said compensation with interest @ 6% from the date of application i.e., 4.1.1994 till realization.

7. At the time of hearing of the appeal learned Counsel appearing on behalf of the Insurance Company argues that the compensation amount of Rs. 3,28,000/- as awarded by the learned Tribunal is high and excessive. He further submits that the right of recovery be given to the insurance company to recover the compensation amount from the owner of the vehicle.

The learned Counsel appearing on behalf of the claimant-Respondents, supports the order of the learned Tribunal.

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

9. Considering the contentions of both the parties and that the father of the deceased retired from the service in 1999 as Inspector of Police, I am of the view that compensation of Rs. 3,00,000/- (Rupees three lakhs) would be just and proper in the facts and circumstances of the case. The Appellant-Insurance Company is directed to deposit a sum of R. 3,00,000/- (Rupees three lakhs)

before the learned Tribunal towards compensation along with interest at the rate of 6% per annum from the date of claim application i.e. 4.1.1994 till the date of deposit before the Tribunal within six weeks from the date of receipt of this order. Payment of simple interest in addition to the amount of compensation has been clearly provided in Section 171 of the Act. After the compensation amount with interest is deposited the learned Tribunal shall disburse the said revised amount in favour of the claimant-Respondents in the manner as directed by the Tribunal in its award.

10. It appears that pursuant to order No. 5 dated 20.11.2005 passed by this Court, the Insurance Company has already deposited compensation amount of Rs. 4,76,837/- before this Court which has been kept in a fixed deposit. Hence, the Insurance Company is entitled to get back the said amount with accrued interest on production of a receipt showing the deposit of the amount of compensation with interest as directed above by this Court before the Tribunal.

11. The learned Tribunal considering the evidence on record more particularly Ext. 5/1 and Ext. 5/2, held that at the time of accident the driver of the vehicle had valid and effective driving licence and he was competent to drive the offending vehicle. In appeal also the Insurance Company has failed to establish that the driver was not in possession of a valid and effective driving license at the relevant time. The Insurance Company is also not disputing that the offending vehicle was validly insured with them. In view of the above, I am not inclined to extent the benefit of right of recovery to the Insurance Company to recover the award amount of compensation and interest from the owner of the vehicle.

12. With the aforesaid direction, the appeal is allowed in part.