

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

MACA Nos.413 & 414 of 2008

From a common judgment dated 19.01.2008 passed by the 4th M.A.C.T.,
Bhadrak in M.A.C. Nos.97 of 2003 and 120 of 2003.

The Divisional Manager,
New India Assurance Co. Ltd.,
Balasore
(In both the appeals)

... Appellant.

-Versus-

Manjulata Jena & others
(In MACA No.413 of 2008)

... Respondents.

Dutika Jena & others
(In MACA No. 414 of 2008)

... Respondents.

For Appellant : M/s. M.Sinha & P.R.Sinha

For Respondents : Mr. D.Samal
(in MACA No.413 of 2008 only)

P R E S E N T:

THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of hearing: 31.03.2011 : Date of Judgment: 25.04.2011

B.N.MAHAPATRA, J. Both the appeals have been directed by the Divisional Manager, New India Assurance Company, Balasore against the judgment dated 19.01.2008 passed by the Motor Accident Claims Tribunal-IV, Bhadrak in M.A.C. No.97 of 2003 and M.A.C. No.120 of 2003. M.A.C. No.97 of 2003 was filed by the mother of the deceased whereas M.A.C. No.120 of 2003 was filed by the wife and the minor children of the deceased Narendra Jena, who died in a vehicular accident which took place on 19.11.2003 for grant of compensation under the provisions of MV Act, 1988.

2. The case of the claimants in both the cases is that on 19.11.2003 at about 8 PM while the deceased was standing on the left side of Bhadrak-Basudevapur road near Andrei Bazar, the offending bus bearing registration No.OR-O1-7383, namely, "Jaga-Kalia" being driven by the driver Ranjan Kumar Das in a rash and negligent manner came in high speed and dashed against the deceased, as a result of which the deceased sustained injuries on his leg, head and penis. Immediately, the injured was taken to District Headquarters Hospital, Bhadrak where he succumbed to the injuries. According to claimants, the deceased was earning Rs.3,000/- per month by engaging himself as a mason and contributing Rs.2,000/- towards family maintenance. In this connection, Bhadrak (R) Police registered Bhadrak (R) PS Case No.253 (13)/03 corresponding to G.R. Case No.1218/03 pending in the Court of S.D.J.M., Bhadrak. After completion of the investigation, the Police submitted charge sheet under Sections 279, 304(A), IPC against the driver of the offending vehicle. With these averments, the claimants filed the claim petitions before the Tribunal claiming compensation under the M.V. Act.

3. The opp. Parties have appeared and filed their written statements. O.P. No.2-Insurance Company denied the averments made in the claim petition. Opp. Party No.1 stated in the written statement that the accident took place due to contributory negligence and there was no fault of the driver. The vehicle had valid insurance policy and the driver had valid driving licence and also he tested his driving licence. They had no knowledge about fake driving licence, if any. They have

seen the driving licence issued by the Licensing Authority, Chandikhol and tested the driver's, driving and on finding him fit he was allowed to drive the vehicle. He was engaged as driver one year before the date of accident. In such situation, respondent-owner is not liable to pay the compensation.

4. On the rival pleadings of the parties, the Tribunal framed the following three issues:-

- (i) Is there any cause of action and is the case maintainable?
- (ii) Whether Chagulu @ Narendra Jena died in a vehicular accident due to rash and negligent driving of the offending vehicle bearing No.OR-01-7383 on 19.11.2003 at Andrei bazar?
- (iii) Whether the petitioners are entitled to get compensation, and if so, from whom and to what extent?

5. After taking into consideration the oral and documentary evidence adduced by the parties, learned Tribunal held that the accident took place due to the rash and negligent driving of the driver Ranjan Kumar Das of the offending vehicle causing injuries and death of the deceased. Due to the death of the deceased, the claimants have lost the contribution of income of the deceased to the family, his love and affection, and future dependency. The offending vehicle was validly insured with O.P. No.2 and at the time of the accident, the age of the deceased was 33 years. The income of the deceased was assessed at Rs.50/- per day. Deducting 1/3rd of the income towards personal expenditure and applying multiplier of 17, the amount of compensation

was assessed at Rs.2,04,000/-. Further, adding Rs.9,500/- towards loss of consortium, loss of estate and funeral expenses, the total compensation was determined at Rs.2,13,500/-.

6. With regard to the validity of the driving licence the learned Tribunal held that the seizure list reveals that D.L.No.283/94-95 stood in the name of Ranjan Kumar Das and was issued by the Licensing Authority, Chandikhol which was valid till 01.06.2006 and the driver's badge number was 185. Considering the evidence of PW-1 and taking note of various judicial pronouncements, the Tribunal recorded that no material was adduced from the side of the Insurance Company to show that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding driving of the vehicle by a duly licensed driver and held that the Insurance Company cannot be absolved of its liability and shift the burden on the owner of the vehicle. On these findings, learned Tribunal directed the Insurance Company-appellant to pay Rs.2,13,500/- with interest at the rate of 6% from the date of claim, i.e., 23.12.2003 till recovery to the claimants in MAC No.120/03 within one month from the date of order. Out of the said award, Rs.1.60 lakhs was directed to be kept in a fixed deposit for five years jointly in the names of the claimants in any nationalized Bank and the balance amount was directed to be paid to them. Opp. Party No.2 was also directed to pay Rs.13,500/- with interest at the rate of 6% per annum from the date of claim, i.e., 16.12.2003 to the petitioner Dutika Jena within one month till recovery in M.A.C. No.97/03.

7. Mr.M.Sinha, learned counsel appearing for the Insurance Company-appellant referring to its grounds of appeal vehemently argued that the amount of compensation awarded by the learned Tribunal is on higher side. The Tribunal erred in holding that the owner of the vehicle having engaged an experienced driver, who had possessed a valid driving licence, the said owner is not guilty of violation of the policy condition. Such finding is erroneous inasmuch as it is an admitted case that the original driving licence is a false one which was issued by the Licensing Authority, Bhubaneswar not in the name of the accused driver Ranjan Kumar Das but in the name of another person, namely, Dilip Kumar Mohanty. Mr. Sinha further submitted that the owner of the vehicle had not verified the genuineness of the original driving licence. It is also not the stand of the owner that he had no knowledge about the original driving license number of his driver. In the renewal DL, the original DL number and its place of issue are clearly noted. In the present case, the DL was issued by the Licensing Authority, Bhubaneswar which is not far away from Chandikhol (renewal office). There is no impediment on the part of the said owner to verify the validity of the original DL of the driver from the office of the Licensing Authority, Bhubaneswar. The owner of the vehicle having not verified the original DL of his driver as required under the law, the learned Tribunal ought to have concluded that the owner of the vehicle is guilty of breach of the Insurance policy. When admittedly the original DL is fake, at least the right of recovery ought to have been given in favour of the Insurance Company-appellant. The Insurance Company has every right to recover the entire award amount

from the owner of the vehicle and the said opportunity having not been afforded to the appellant, the award is vitiated in law and liable to be set aside.

8. Mr.Samal, learned counsel appearing for respondent No.1 submits that the amount of compensation awarded by the Tribunal is extremely on the lower side. The deceased left behind him two unmarried daughters and the widow. The accident took place in 2003 when the income of a daily wage earner was minimum Rs.100/-. The deceased was a mason. Therefore, the amount of compensation computed taking Rs.50/- as daily income of the deceased is extremely low. The Tribunal has rightly held the Insurance Company liable to pay the compensation awarded.

9. On the rival contentions, following three questions fall for consideration by this Court:-

(i) Whether the amount of compensation awarded by the Tribunal is just and proper?

(ii) Whether the Tribunal is justified in holding that there is no breach of policy condition by the insured with regard to driving licence of the driver of the offending vehicle and therefore the Insurance Company is liable to pay the amount of compensation?

(iii) Whether the appellant-Insurance Company is entitled to be granted with the right of recovery of the entire awarded amount from the owner of the vehicle for breach of policy condition?

10. So far as first question is concerned, both the appellant-Insurance Company and the claimants submitted that the compensation awarded by the learned Tribunal is not just and proper. According to the Insurance Company, the amount of compensation awarded is on higher side and is liable to be substantially reduced. Per contra, the claimant-respondent's grievance is that the amount of compensation awarded to the dependants of the deceased, who left behind him two unmarried daughters and widow, is extremely low. In view of the above rival contentions of the parties, it is felt necessary to decide what should be the just compensation in the instant case. In support of their claim, Manjulata Jena, the wife of the deceased, examined herself as PW-1 in M.A.C. No.120/03. In her evidence, she stated that the deceased at the time of accident was about 33 years old and earning Rs.3,000/- per month as mason and was contributing Rs.2,000/- towards family maintenance. Learned Tribunal in its order held that in the absence of any document the deceased was treated to be a daily wage earner and at the time of accident he was earning Rs.50/- per day. Needless to say that a mason/labourer/daily wage earner does not maintain record or document with regard to his income. Therefore, in absence of any adverse material the Tribunal is not justified to disbelieve the evidence of PW-1 Manjubala Jena, the wife of the deceased that he was earning Rs.3,000/- per month as a mason.

11. At this juncture, it will be profitable to refer to the judgment of the Apex Court in the case of **Laxmi Devi & Ors. Vs. Mohammad Tabbar and Anr.**, 2008(2) T.A.C. 394 (S.C.). In the said case, the

Tribunal assessed income of the deceased at Rs.15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the M.V. Act. Besides, compensation of Rs.2,000/-, Rs.5,000/- and Rs.2,000/- respectively was also allowed towards funeral expenses, loss of consortium to the widow and loss of estate. In an Appeal carried to the High Court, the High Court while determining the income of the deceased held that though the claim of income of Rs.4,200/- per month was not reliable, the notional income should have been held at Rs.36,000/- per annum, i.e., Rs.3,000/- per month. For this proposition the High Court held that the notional income of Rs.15,000/- per annum in the Second Schedule was prescribed in the year 1994 while the accident had taken place in the year 2004. The second reason given by the High Court is that even an unskilled labourer, on those days could easily earn Rs.100/- per day and Rs.3,000/- per month and, therefore, the High Court held the income to be Rs.36,000/- per annum and by deducting 1/3rd of the income of the deceased for his personal expenses, the claimants' dependency was assessed at Rs.24,000/- per annum. The matter was further carried to the Apex Court. The Apex Court held that the figure arrived by the High Court at Rs.100/- per day and Rs.3,000/- per month appears to be correct.

12. In the instant case, the accident took place in the year 2003. PW-1 in her evidence stated that the deceased, at the time of accident was earning Rs.3,000/- per month as a mason. There is nothing on record to disbelieve the evidence of PW-1. In view of the same, it would be just and

proper to take the monthly income of the deceased at Rs.3,000/-. Accordingly, the monthly income of the deceased is determined at Rs.3,000/- and deducting 1/3rd towards his personal expenses his contribution towards family is determined at Rs.2,000/- per month. Considering that the deceased was 33 years old at the time of accident, the Tribunal has applied 17 multiplier, as provided under second schedule of M.V. Act. Therefore, 17 would be the appropriate multiplier. Taking Rs.2,000/- per month as contribution towards maintenance of family and applying 17 multiplier, amount of compensation is determined at Rs.4,08,000/- (Rs.2,000/- x 12 x 17). Apart from this, Rs.9,500/- is awarded towards loss of consortium, loss of estate and for funeral expenses as awarded by the Tribunal. Thus, the claimants are entitled to get compensation of Rs.4,17,500/-.

13. Mr. Sinha opposing to the submission made by learned counsel appearing on behalf of Respondents for enhancement of compensation at the time of hearing of appeal contended that in absence of any appeal filed by the claimant-respondents this Court should not enhance the amount of compensation. This argument of Mr.Sinha is not sustainable in law.

This Court in the cases of ***Kunibala Sahoo & Others vs. Jagmohan Majhi and another and M/s. Oriental Insurance Company Ltd. vs. Kunibala Sahoo & others***, 2011 (1) ILR CUT 115, held as follows:-

“Section 168 of the M.V. Act deals with award of Claims Tribunal. The said section empowers the Claims Tribunal to determine the amount of compensation which appears to it to be just.

Therefore, the Tribunal is duty bound to determine the just compensation under Section 168 of the M.V. Act in the given circumstances in a particular case. There is no restriction that the compensation could be awarded only up to the amount claimed by the claimants. This being the intention of the legislature, the determination of just compensation as required under Section 168 of the M.V. Act is nothing to do with the amount of compensation claimed by the claimants. Amount of just compensation determinable under Section 168 of the M.V. Act may be less or more than the amount of compensation claimed by the claimant depending upon the facts and circumstances of a particular case.

In the case of ***Nagappa vs. Gurudayal Singh and others, AIR 2003 SC 674***, the apex Court held that under the provisions of Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimants. In an appropriate case where from the evidence brought on record if the Tribunal/Court considers that claimant is entitled to get more compensation than the amount claimed, the Tribunal may pass such award. Only embargo is — it should be ‘Just’ compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act.

This Court in ***Mulla Md. Abdul Wahid vs. Abdul Rahim and another, 76 (1993) C.L.T. 605*** held that the Tribunal has the duty to determine the amount of compensation which appears to it to be just. The expression “just compensation” would obviously mean what is fair, moderate and reasonable and awardable in the proved circumstances of a particular case and the Tribunal has the power to award compensation more than the amount claimed by the claimants.”

Law postulates determination of just compensation. Therefore, even in absence of an appeal by the claimant in an appropriate case this Court can enhance the quantum of compensation payable.

14. The second question is as to whether the driver of the offending vehicle possessed a valid driving licence at the time of accident. According to Mr.Sinha, the licence possessed by the driver,

Ranjan Kumar Das was renewed by the Licensing Authority, Chandikhol is not genuine as the original DL issued in the name of Dilip Kumar Mohanty by the Licensing Authority, Bhubaneswar is a false DL. It is not the case of the Insurance Company that the Licensing Authority, Chandikhol has not renewed the licence in question in the name of driver Ranjan Kumar Das. No evidence was either adduced before the learned Tribunal or before this Court to prove that no such driving licence was renewed in the name of the driver Ranjan Kumar Das by the Licensing Authority, Chandikhol, who is the competent authority to issue/renew Driving Licence. Similarly, the Insurance Company-appellant has also not adduced any evidence either before the Tribunal or before this Court in support of his contention that the original licence issued in the name of Dilip Kumar Mohanty by the Licensing Authority, Bhubaneswar is false/fake.

The foundation of the argument of Mr. Sinha is that admittedly the original Driving Licence issued by the Licensing Authority, Bhubaneswar is false/fake one, but the owner of the vehicle never admitted that the original licence issued by the Licensing Authority, Bhubaneswar is fake. On the contrary, the case of the owner of the vehicle is that the driver possessed a valid driving licence at the time of accident.

15. Law is well settled that renewal of a license is nothing but grant of a fresh licence.

In ***Provash Chandra Dalui & Anr. Vs. Viswanath banerjee & Anr.***, AIR 1989 SC 1834, the Supreme Court dealing with a

case under the provisions of Calcutta Thika Tenancy Act, 1949, explained the distinction between extension and renewal of lease, observing that extension merely means prolongation of the lease where as 'renewal' means a new lease.

16. Apart from the above, the Tribunal has come to the conclusion that the insured has verified the licence renewed by Licensing Authority,, Chandikhol, tested the driver about his capability to drive heavy vehicle and on being satisfied about his capacity to drive such vehicle he appointed him as driver prior to one year of the incident.

At this juncture, it will be appropriate to extract the relevant paragraph of the order of the Tribunal which deals with the DL of the driver of the offending vehicle:-

“As regard the validity of D.L. seizure list reveals D.L.No.283/94-95 in the name of Ranjan Kumar Das has been issued by L.A. Chandikhol which was valid till 1.6.06. Driver badge number is 185. It is submitted on behalf of O.P. No.2 that the renewal driving license number 283/94-95 of L.A.Chandikhol is in the name of Ranjan Kumar Das. Its original driving license No. is 2107/84 of L.A. Bhubaneswar. On verification it is found that the original D.L. No.2107/84 of L.A. Bhubaneswar is in the name of Dilip Kumar Mohanty but not in the name of Ranjan Kumar Das. Accordingly it is submitted by O.P. No.2 that the renewed D.L. No.283/94-95 of L.A. Chandikhol in the name of R.K.Das has not been issued on the basis of original D.L. Hence it is a fake one. On the other hand it is submitted on behalf of O.P. No.1 that D.L. No.283/94-95 of L.A. Chandikhol is in the name of R.K.Das who was authorised to drive H.G.V. and HPMV with effect from 11.6.94 and renewed up to 25.6.2000 with effect from 26.6.97 and it was again renewed up to 1.6.06 with effect from 2.6.2000. Besides that the owner and his son are experienced drivers having valid D.Ls. and they have verified Chandikhol driving licence, tested the driver about his capability to drive heavy vehicle and on being satisfied about the capacity to drive heavy passenger vehicle

appointed him as driver prior to one year of the incident, and they have no knowledge about driver's fake driving licence if any. As the owner examined, saw the driving licence and after being satisfied him-self that the driver had licence and was driving very well there is no breach of policy and therefore the insurance Company would not then be absolved of its liability. In this case insurance company has also not proved that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding driving of vehicle by duly license driver. In this connection Id. Counsel for O.P. No.1 has relied on the decisions reported in case of L.Chand Vs. Oriental Insurance Co., Ltd., 2006 (II) OLR (SC)-700 and M.Samantaray and another Vs. Oriental Insurance Co. Ltd. and another (2006) 33 OCR-766 and New India Assurance Company through its Divisional Manager, Bhubaneswar Vs. Kalia Behera and others, 2007 (I) OLR-637. So in view of the principles laid by the Hon'ble Court and Apex Court of India, evidence of O.P.W.1 supported with documentary evidence that they have verified the renewed licence issued by L.A. Chandikhol to drive heavy passenger vehicle and they are being experienced drivers and after testing driver's driving who is able to driver such vehicle they appointed him as driver prior to one year of the accident. At the absence of any material from the side of Insurance Co. that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding driving of the vehicle by duly licensed driver the insurance company can not be absolved of its liability and shift burden on O.P.No.1."

17. In view of the above, the Tribunal is justified in holding that there is no breach of policy condition by the insured with regard to driving licence of the driver of the offending vehicle and therefore the Insurance Company is liable to pay the amount of compensation.

18. On 24.04.2011 a written notes of submission was filed by the appellant-Insurance Company. In the written notes of submission, it is stated that the appellant-Insurance Company filed a verification report of the Licensing Authority, Bhubaneswar from which it transpires that

the same was issued in the name of Dilip Kumar Mohanty. Thereafter, it is stated that it is immaterial whether the original driving licence was fake or not. Since original licence was issued in the name of Dilip Kumar Mohanty, renewal of licence in the name of the accused driver Ranjan Kumar Das is not valid. The above contention of Mr.Sinha is contrary to the ground taken in ground Nos.2 and 3 of appeal memo. In ground no.2, it is stated that the original driving license is a false driving licence which was issued in the name of Dilip Kumar Mohanty. Hence, renewal of Driving Licence in the name of the driver of the offending vehicle, namely, Ranjan Kumar Das by Licensing Authority, Chandikhol is not valid. In ground No.3, it is stated that when the original Driving Licence stands fake a right of recovery ought to have been given in favour of the appellant-Insurance Company. Since the written note of submission with regard to validity of Driving Licence possessed by the driver of the offending vehicle is at variance with the grounds of appeal, the same merits no consideration.

In any event, in view of the reasons stated in preceding paragraphs, with regard to question no.(ii) this Court is of the considered view that the driver of the offending vehicle, Ranjan Kumar Das had possessed a valid driving licence on the date of accident and there is no breach of policy condition by the insured with regard to Driving Licence of the driver of the offending vehicle.

19. The third question relates to the appellant's entitlement to be granted with right of recovery of the amount of compensation from the owner of the vehicle.

20. In the written note of submission, it is stated that in a claim case, the issue is confined to the entitlement of the claimant to get the award for the injury or death of the road accident victims. During trial of such claim case where the effectiveness of driving licence has been challenged by the Insurance Company the inter se dispute between the owner/insured and the insurance Company touching the validity of the driving licence or the violation of policy condition is not to be adjudicated. Learned Tribunal should keep such inter se dispute open/alive for being adjudicated at a later stage where the presence of claimants will not be required at all. In such a situation, the learned Tribunal can not give a positive finding that he is satisfied that there exists a valid driving licence for which the right of recovery cannot be afforded to the Insurance Company ignoring the positive plea of the Insurance Company that the driver had no valid driving licence.

The above stand of Mr. Sinha is not acceptable. Mr. Sinha has not cited any provisions of law in support of his above proposition. A mere challenge to the validity of a driving licence possessed by the driver of the offending vehicle at the time of accident by the Insurance Company is not sufficient. The Insurance Company has to prove its case. Where the Insurance Company simply takes a stand that the Driving Licence possessed by the driver of the offending vehicle is not valid/genuine and fails to prove the same,⁹ the Tribunal will be justified to reject such stand and shall take a decision on the materials evidence available on record. It cannot be kept open/alive for being adjudicated at a later stage as claimed by Mr. Sinha. If the stand taken by Mr. Sinha is accepted then the

same would be against the concept of finality and amount to allow the litigation to prolong for no valid reason/sanction of law. Needless to say that unless the insurer proves its right to recover the amount from the owner of the vehicle for breach of policy condition such a right cannot be given to the insurer in a routine manner as claimed by Mr.Sinha.

In view of my discussions in the preceding paragraphs, the appellant is not entitled to be granted with the right of recovery of amount of compensation from the owner of the offending vehicle.

21. In the fact situation, this Court directs the appellant-Insurance Company to deposit the compensation amount of Rs.4,17,500/- along with interest at the rate of 6% per annum before the Tribunal from the date of filing of the claim application i.e. 16.12.2003 till the date of deposit and cost of Rs.2,000/- within eight weeks from today. On deposit of the compensation amount along with interest and cost as directed above, the Tribunal shall disburse the same to the respondents in both the appeals in the manner directed in its order.

22. On production of evidence /receipt in support of deposit of the above amount of compensation along with interest and cost before the Tribunal, the Registrar (Judicial) of this Court shall refund the statutory deposit of Rs.25,000/- along with interest accrued thereon to the appellant-Insurance Company.

23. In the result, both the appeals are dismissed with the above directions.

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B.N.Mahapatra,J