

HIGH COURT OF ORISSA: CUTTACK.

M.A.C.A.NO.21 OF 2012

From an award dated 08.07.2011 passed by the Additional District Judge,
Malkangiri-cum-4th Motor Accident Claims Tribunal- in M.A.C. No.07 of 2008.

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The Manager,
M/s Oriental Insurance Co. Ltd., ... Appellant
Bhubaneswar

-versus-

Nanga Madkami and ... Respondents
Others.

For Appellant : M/s. Mitalee Jesti,
M.C.Nayak & D.C.Dey.

For Respondents : M/s. Jugal Kishore Panda
& Jagannath Das

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P R E S E N T:

THE HONOURABLE MR.JUSTICE B.N.MAHAPATRA

Heard and disposed of on 20.12.2012

B.N.MAHAPATRA, J. This is an appeal under section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') filed by the Insurance Company against an award dated 08.07.2011 passed by the Motor Accident Claims Tribunal-cum-Additional District Judge, Malkangiri (hereinafter referred to as "the Tribunal") in M.A.C. No.07 of 2008 awarding Rs.2,30,000/- with 6% interest per annum from the date of filing of claim petition, i.e., 26.03.2008 till the date of payment.

2. Case of the claimant-petitioners before the learned Tribunal was that on 16.02.2007 at about 3.00 PM deceased, Bhima Madkami was going to witness Kambeda Shivratri festival along with his sister Kose Madkami and one co-villager, namely Deba Madi. On the way near Kichipalli village, the offending vehicle, i.e., Tractor and Trolley bearing Registration Nos.OR-10-D-8869 and OR-10-D-8870 respectively, came from behind the deceased being driven by the driver in a rash and negligent manner and dashed against cycle of the deceased at 6.PM. Due to such vehicular accident, the deceased sustained grievous injuries for which, he was shifted to Malkangiri District Headquarters Hospital immediately, but on the same night at about 3.00 AM, the deceased died at the Hospital.

3. Further case of the claimant-petitioners was that the deceased died due to the rash and negligent driving of the driver of the offending vehicle. The deceased was a brilliant student and was reading in Class-V at Rauliguda U.P. School at the time of his death. The deceased had a bright future and on account of his death, the family members sustained heavy loss. It was alleged that the owner of the offending vehicle (opposite party No.1 before the Tribunal) is vicariously liable for the rash and negligent driving of the driver of the offending vehicle, which resulted in the death of the deceased. Opposite party No.3 (insurer of the offending vehicle) is also jointly and vicariously liable for the death of the deceased. On the above premises, claimant-petitioners, who happen to be the parents and sisters of the deceased, filed claim petition before the Tribunal claiming compensation

of Rs.3,00,000/- from the appellant-insurance Company due to death of the deceased on account of the vehicular accident in question.

4. Opposite parties 1 and 2 denying the claim of the claimant-petitioners that they were responsible for the death of the deceased student in the alleged vehicular accident filed their written statement jointly on the ground that the vehicle was not driven in high speed and negligent manner. Rather the alleged vehicle was passing on the left side of the road very slowly on the date of occurrence and the deceased boy fell down due to imbalance as he was riding the cycle carelessly. Apart from the above, it was also stated that the driver of the offending vehicle had a valid driving licence at the time of accident and the said vehicle was duly insured with the Insurance Company covering the date of accident. Therefore, the Insurance Company is liable to indemnify the owner of the vehicle.

5. Opposite party No.3-appellant Insurance Company also filed written statement, inter-alia, challenging the claim on the ground of non-joinder of necessary parties.

6. On the above pleadings, the learned Tribunal framed the following four issues:-

- (i) Whether there was an accident, as alleged, causing the death of the deceased Bhima Madkami?
- (ii) Whether the Insurance Company in respect of the offending vehicle and the driving licence of the driver thereof were valid?
- (iii) Whether the respondents are jointly and severally liable for the compensation to the petitioners?

- (iv) Whether the petitioners are entitled for the compensation as prayed for?

7. The claimants examined three witnesses and filed six documents, which were marked as Exts.1 to 6. The Insurance Company neither examined any witness nor produced any documents on its behalf.

8. After taking into consideration the oral and documentary evidence and rival contentions of the parties, the learned Tribunal came to the conclusion that the accident took place due to rash and negligent driving by the driver of the offending Truck and the deceased died in the said accident. The learned Tribunal held that the Insurance Company is liable to pay the compensation to the claimants. Learned Tribunal taking into consideration decision of the Hon'ble Supreme Court in *Manju Devi & Anr. Vs. Musafir Paswan & Anr.*, 2005(1) T.A.C. 609 and age of the deceased as 15 years, applied 15 multiplier and assessed the compensation at Rs.2,30,000/- which includes Rs.5,000/- towards funeral expenses. The learned Tribunal directed the Insurance Company to pay the awarded amount of Rs.2,30,000/- to petitioner Nos.1 and 2 along with interest at the rate of 6% per annum from the date of filing of the claim petition, i.e., 26.03.2008 within one month of its order. Being aggrieved by the impugned award passed by the learned Tribunal, the Insurance Company has filed the present appeal.

9. Mrs. Mitalee Jesti, learned counsel appearing on behalf of the appellant-Insurance Company submits that the amount of compensation awarded by the learned Tribunal is extremely high and excessive. On the

other hand, Mr.J.K.Panda, learned counsel appearing for claimant-respondents submits that the amount of compensation awarded by the learned Tribunal is just and proper and therefore, this Court should not interfere with the amount of compensation awarded by the Tribunal. However, Mr.Panda submits that this appeal may be disposed of in the manner and spirit in which the motor accident claim cases are disposed of in the Lokadalat, to which Ms. Jesti, learned counsel for the Insurance Company has no objection.

10. Considering the facts and circumstances of the case and the contentions of the parties, I am of the view that a compensation of Rs.2,00,000/- would be just and proper in the present case. In view of the above, the Insurance Company is directed to pay a sum of Rs.2,00,000/- (Rupees two lakhs) to the claimant-respondents towards compensation along with interest at the rate of 6% per annum from the date of claim application, i.e., 26.03.2008 till the date of deposit before the Tribunal. The entire amount shall be deposited by the Insurance Company before the learned Tribunal within a period of eight weeks from today. After deposit of the compensation amount before the learned Tribunal, as indicated above, the same shall be disbursed in favour of the claimant-respondents in the manner as directed by the learned Tribunal on proper identification.

11. The further submission of the learned counsel for the Insurance Company is for refund of statutory amount of Rs.25,000/- deposited in this Court. The statutory amount of Rs.25,000/- along with interest accrued thereon 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 as directed above before the learned Tribunal.

12. With the above direction, the appeal is allowed to the extent indicated above.

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B.N.Mahapatra,J.

Orissa High Court, Cuttack,
The 20th December, 2012/ss.