

HIGH COURT OF ORISSA: CUTTACK.

M.A.C.A.NO.545 OF 2012

From an award dated 28.11.2011 passed by the Additional District Judge,
Cuttack-cum-1ST Motor Accident Claims Tribunal in M.A.C. No.656 of 2006.

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National Insurance Co. Ltd.,
Cantonment Road, Cuttack

...

Appellant

-versus-

Krushna Chandra Sahoo and
Others.

...

Respondents

For Appellant : M/s. Goutam Misra,
& D.K.Patra.

For Respondents : M/s. S.R.Mulia, P.K.Behera,
R.C.Maharana, R.R.Nayak,
& M.M.Mulia

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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 the award dated 28.11.2011 passed by the Additional District Judge, Cuttack-cum-1ST Motor Accident Claims Tribunal (hereinafter referred to as "the Tribunal") in M.A.C. No.656 of 2006 awarding Rs.4,12,500/- with 7.5% interest per annum from the date of filing of claim petition, i.e., 21.11.2006 till the date of payment.

2. Succinct fact of the case of the claimant-petitioners before the Tribunal was that on 28.09.2006 at about 12.00 mid night on Cuttack-Jagatsinghpur road near Kaijanga Godown turning Pindi, the alleged offending truck bearing registration No. ORU-2267 dashed against a trolley rickshaw which was driven by deceased Hemanta Sahoo. At the time of said accident, one Biswajit Sahoo and Harihar Behera were sitting on the trolley. Due to the said accident, two deceased persons, namely, Biswajit Sahoo and Hemanta Sahoo succumbed to the injuries. Subsequently, applications were filed under Section 166 of the Act claiming compensation to the tune of Rs.4,00,000/- and the present Appeal arises out of the application filed by the legal heirs of deceased Biswajeet Sahoo.

3. Further, the case of the claimant-respondent before the Tribunal that the accident took place due to negligence of driver of the offending truck and the deceased persons had no contribution in any manner to the said accident. The offending vehicle was validly insured under the appellant-Insurance Company covering the date of accident. Deceased Biswajit Sahoo was 23 years old on the relevant date of accident and earning Rs.3,000/- per month being engaged as Supervisor in M/s Maa Durga Polymer, Jagatpur, Cuttack. He was also earning Rs.50/- per day by doing decoration work apart from the supervisory work.

4. Owner of the offending vehicle did not appear before the Tribunal. Appellant/opposite party No.3-Insurance Company filed its written statement denying the averments of the claimant/petitioners made in the claim petition. Insurance Company also raised serious objection with regard

to occupation, income of the deceased, so also the amount of compensation claimed.

5. On the above pleadings, the learned Tribunal framed the following four issues so far as it relates to the deceased Biswajit Sahoo for whom the present Appeal has been filed:-

- (i) Whether due to rash and negligent driving of the driver of the offending vehicle bearing registration No. ORU-2267 the accident took place and in that accident, deceased Biswajit Sahoo succumbed to the injuries?
- (ii) Whether the claimant/petitioners are entitled to get the compensation, if so, what would be the extent; and?
- (iii) Whether all the opposite parties or any of the opposite parties is liable to pay the compensation?
- (iv) To what relief, if any, the petitioners are entitled to?

6. The claimant/petitioners examined five witnesses and filed eighteen documents, which were marked as Exts.1 to 18. The Insurance Company neither examined any witness nor produced any documents on their behalf.

7. 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 the ratio of decision of the Hon'ble Supreme Court in *P.S.Somanathan Vs. District Insurance Officer and Anr.*, AIR 2011 SCW 1313 and age of the deceased as 23 years, applied 17 multiplier to assess the compensation at Rs.4,12,500/- which includes Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. The learned Tribunal directed the Insurance Company to pay the awarded amount of Rs.2,30,000/- to petitioners along with interest at the rate of 7.5% per annum from the date of filing of the claim petition, i.e., 21.11.2006 within one month of its order with certain conditions. Being aggrieved by the impugned award passed by the learned Tribunal, the Insurance Company has filed the present appeal.

8. Mr.G.Mishra, learned counsel appearing on behalf of the appellant-Insurance Company submits that the impugned award is high and excessive because of application of wrong multiplier, interest rate and assessment of loss of dependency. Placing reliance on the ratio of the following decisions of the Hon'ble Supreme Court in *Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and another*, AIR 2003 SC 4182, *Sarala Verma Vs. Delhi Transport Corporation*, (2009) 6 SCC 121, *Syed Basheer Ahmed and others Vs. Mohammed Jameel and another*, (2009) 2 SCC 225, it is submitted that if the ratio of the above decisions of the Hon'ble Supreme Court are applied the amount of compensation would be reduced substantially.

9. On the other hand, Mr.R.C.Maharana, 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.Maharana 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 Mr.G. Mishra, learned counsel for the Insurance Company has no serious 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.3,20,000/- would be just and proper in the present case. Contention of Mr.G.Mishra that the rate of interest, i.e., 7.5% per annum appears to be high cannot be accepted as this Court feels the same to be reasonable.

11. In view of the above, the Insurance Company is directed to pay a sum of Rs.3,20,000/- (Rupees three lakh twenty thousand) to the claimant-respondents towards compensation along with interest at the rate of 7.5% per annum from the date of claim application, i.e., 21.11.2006 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 amount of compensation, as indicated above before the learned Tribunal, the same shall be disbursed in favour of the claimant-respondents in the manner as directed by the Tribunal.

12. 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.

13. 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.