

HIGH COURT OF ORISSA: CUTTACK.

M.A.C.A.NO.153 OF 2012

From a common judgment dated 08.01.2010 passed by the Court of the 1st Addl. District Judge-cum-1st Motor Accident Claims Tribunal, Cuttack in MAC No.114 of 2006.

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Bimala Mukhi,
Wife of Late Kishore Mukhi
Village:Panchama, PO: Kamaladiha,
PS: Narasinghpur, Dist: Cuttack
and others

... Appellants

-versus-

Naresh Chandra Sahoo
and another

... Respondents

For Appellants : M/s. Dr. T.C. Mohanty, Sr. Advocate,
J. Mohanty, S. Mohanty & R.P.Bhagat

For Respondents : M/s. B.K. Nayak-1, D.K. Mohanty,
[For Respondent No.2]

M/s. R.K. Pradhan, S. Mishra
(For Respondent No.1]

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P R E S E N T:

THE HONOURABLE MR.JUSTICE B.N.MAHAPATRA

Date of Judgment : 30.04.2013

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 claimant-appellants against the judgment dated 08.01.2010 passed by the Court of the 1st Addl.

District Judge-cum-1st Motor Accident Claims Tribunal, Cuttack (hereinafter referred to as “the Tribunal”) in MAC No.114 of 2006.

2. The case of the claimant-appellants before the learned Tribunal was that on 10.03.2006 on Narasinghpur-Kamaladiha road near Regeda (Daluabanka) three passengers namely, Krushna Mukhi, Santosh Sethi and Kishore Mukhi died in a vehicular accident caused due to rash and negligent driving of the driver of the vehicle bearing Registration No.OR-05-T-1645. The deceased persons were travelling as passengers at the relevant time of accident in the offending vehicle which was plying from Panchama towards Zillinda side and due to rash and negligent driving of the vehicle, the driver could not control the vehicle and it capsized. In the said accident, the deceased persons sustained injuries. Soon after the accident, they were taken to the nearest hospital, but the concerned doctor declared them dead. Thereafter, the matter was reported to the concerned police and accordingly Narasinghpur P.S. Case No.26 of 2006 was registered and investigation was carried on. During the course of investigation, the Investigating Officer seized the documents of the offending vehicle and the DL of the driver. The Investigating Officer submitted a charge sheet with the conclusion that the driver of the offending vehicle was rash and negligent in his driving. Further case of the claimants is that the deceased was a Mason and his monthly income was Rs.5,000/-. At the time of death, he was 49 years. With these averments, the claimants filed a claim petition before the Tribunal claiming compensation of Rs.3,00,000/-.

3. Before the Tribunal, the owner of the vehicle was set ex parte. Opposite party No.2-Insurance Company contested the case stating that the deceased was not travelling in the said vehicle at the relevant time of accident and it was a cooked up story. It was further pleaded in the written statement that the offending vehicle was not insured under it. Therefore, question of indemnifying the compensation amount did not arise. It was alternatively pleaded that the amount of compensation was high and excessive.

4. On the rival pleadings, the learned Tribunal framed as many as four issues.

Taking into consideration both oral and documentary evidence, the Tribunal came to the conclusion that the accident is the outcome of rash and negligent driving of the driver of the offending vehicle.

5. Learned Tribunal has assessed the annual income of the deceased at Rs.15,000/- as notional income in the instant case and deducted 1/3rd of the income towards personal expenses. Applying multiplier 13 as deceased was 50 years, the amount of compensation was determined at Rs.1,30,000/- (rupees one lakh thirty thousand). Further a sum of Rs.9500/- was also awarded towards funeral expenses, loss of estate and consortium. Accordingly, the claimants were awarded Rs.1,39,500/- as compensation. The learned Tribunal directed opposite party No.2-Insurance Company to pay the aforesaid amount of compensation of Rs.1,39,500/- along with interest @ 7.5 % per annum w.e.f. 05.04.2006 till the date of payment with right to recover the same from the owner of the vehicle.

Learned Tribunal also directed to keep a portion of the said amount in fixed deposit in the name of the claimants.

6. Dr. T.C. Mohanty, learned Senior Advocate appearing for the appellant-claimants challenges the impugned judgment basically on two grounds : (i) the deceased was a mason at the relevant time of accident; (ii) his income was Rs.5,000/- per month. P.W.3, wife of the deceased in her evidence has stated that her husband was earning Rs.5,000/- per month. In cross-examination nothing contrary was elicited. No contrary evidence has been adduced by opposite party-Insurance Company to disprove the statement of P.W.3. Alternatively, Dr. Mohanty submits that the accident took place in the year 2006 and in view of the judgment of the Hon'ble Supreme Court in the Case of *Laxmi Devi & Ors. -vs- Mohammad Tabbar & Anr.*, 2008 (2) T.A.C. 394 (S.C.), the income of the deceased should be taken more than Rs.3,000/- per month.

7. Mr. D.K. Mohanty, learned counsel appearing for the Insurance Company submits that no document has been produced in support of the contention of the claimants that the deceased was earning Rs.5,000/- per month by working as a Mason. Hence, the learned Tribunal has rightly assessed the annual notional income of the deceased at Rs.15,000/- as provided in the Second Schedule to the Motor Vehicles Act.

8. Mr. R.K. Pradhan, learned counsel appearing for the owner of the vehicle, Respondent No.1 submits that vehicle was covered under valid insurance policy. Due to unavoidable circumstances, owner of the vehicle could not appear before the Tribunal. He further submits that in the interest

of justice, the matter may be remanded to the Tribunal for fresh adjudication. He fairly admits that the owner has not challenged the order of the Tribunal before this Court.

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

- (i) Whether the annual income of the deceased as determined by the Tribunal at Rs.15,000/- is just and proper ?
- (ii) Whether it is a fit case to remand the matter to the Tribunal for fresh adjudication ?
- (iii) What order ?

10. So far the income of the deceased is concerned, the claim of the claimants is that the deceased was a Carpenter at the relevant time and was earning Rs.5,000/- per month which was corroborated by evidence of P.W.3, who is the wife of the deceased. It is also a fact that the Insurance Company has not adduced any evidence to show that the income of the deceased was Rs.15,000/- per annum as held by the Tribunal. The Tribunal estimated the annual notional income of the deceased at Rs.15,000/- without any basis. Notional annual income of Rs.15,000/- is provided under Schedule-II of the M.V. Act, which has been framed in the year 1994. In the present case, accident took place in the year 2006.

11. In the case of **Laxmi Devi** (*supra*), since the accident took place in the year 2004, the Hon'ble Supreme Court upheld the income of Rs.3,000/- per month in case of a non-earning person as determined by the High Court. In view of the above, this Court is of the view that it would be just and proper to determine the monthly income of deceased at Rs.3,000/-.

12. So far question No.(ii) is concerned, undisputedly the owner of the vehicle had chosen to remain absent before the Tribunal despite service of notice. It is also a fact that no appeal has been preferred by the owner of the vehicle challenging the order of the Tribunal granting right of recovery to the Insurance Company. The accident of the deceased relates to the year 2006. Therefore, no fruitful purpose would be served if the matter is remanded back to the Tribunal for fresh adjudication. The same will only linger the proceeding and will not serve the interest of justice. However, it is open to the owner of the vehicle to raise all his contentions denying his liability in the recovery proceeding, if any, that would be initiated by the Insurance Company before the Tribunal.

13. In fact situation, the amount of compensation payable to the claimants is determined taking into consideration the monthly income of the deceased at Rs.3,000/-, deducting 1/3rd towards personal expenses and applying 13 multiplier. Thus, the amount of compensation comes to Rs.3,12,000/-(Rs.2,000/- x 12 x 13). When Rs.9,500/- is added towards funeral expenses, loss of estate and loss of consortium, as awarded by the Tribunal, the total amount of compensation comes to Rs.3,21,500/-, which the Insurance Company is liable to pay to the claimants.

14. It is submitted that in the meantime, pursuant to the direction of the Tribunal, the Insurance Company has already deposited amount of compensation of Rs.1,39,500/-. Therefore, the Insurance Company is directed to deposit the balance amount of compensation of Rs.1,82,000/- [Rs.3,21,500.00 — Rs.1,39,500.00] along with 7.5% interest per annum from

the date of filing of the claim petition till the date of deposit before the Tribunal within a period of eight weeks from today. On deposit of the balance amount of compensation along with interest, the Tribunal shall disburse the same to the claimants in the manner it has directed in its judgment.

15. In the result, the appeal is allowed to the extent indicated above.

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B.N.Mahapatra, J

Orissa High Court, Cuttack
Date 30th April, 2013/skj