

ORISSA HIGH COURT: CUTTACK

M.A.C.A.No.737 of 2009

From an award dated 22nd May, 2009 passed by M.A.C.T-I, Balasore in M.A.C. No.82 of 2001.

Smt. Babita Parida,
W/o. Late Jayanta Kumar Parida and others ... Appellants.

-Versus-

Maa Basanti Tractor Group,
represented through Ajaya Kumar Karan,
Bhanupur, Jaleswar, Dist: Balasore ... Respondents.

For Appellants : M/s. A.K. Behera, P. Dandapat &
D. Mishra

For Respondents : M/s.Sabita Ranjan Pattnaik,
Mrs. P. Pattnaik, D. Pradhan,
R.P. Pattnaik, N.K. Senapati &
N.K. Biswal
(For Respondent No.2)

P R E S E N T :

THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA

Heard and disposed of on 06.02.2013

B.N.Mahapatra, J. The present appeal has been filed by the appellants challenging the order dated 22nd May, 2009 passed by learned M.A.C.T.-I, Balasore (for short, Tribunal) in M.A.C. No.82 of 2001 seeking for enhancement of the compensation amount awarded by the said Tribunal.

2. Appellants' case before the Tribunal in a nut-shell was that on 11.02.2001 while the deceased was moving towards the fish culture area/site for supervision from his office-Srinibas Marine Export and Import Company, wherein he was working as Legal Advisor-cum-Supervisor, a tractor bearing Registration No.OR-01C-5041 coming from opposite

direction, suddenly capsized towards right side of the road and dashed the deceased due to depression of newly constructed road. As a result, the deceased sustained injuries and was shifted to Bhograi P.H.C. for treatment where the doctor declared him dead. On the date of accident, the weather was clear and the road was sufficiently wide and in spite of that, the driver, due to negligent driving of the vehicle, caused the accident, for which not only the owner of the vehicle but also the insurer of the vehicle are liable to pay compensation. It is further stated that the deceased was getting Rs.13,000/- PM and out of the same, he was contributing Rs.10,000/- to his family. With these averments, the claimants filed a claim petition before the Tribunal claiming compensation of Rs.10.00 lakhs.

3. The owner of the vehicle though filed written statement, did not contest the proceeding and the case was heard *ex parte*.

4. The Insurance Company also filed written statement denying the accident and the involvement of the tractor. Further stand taken by the Insurance Company was that the accident took place due to the negligent driving of the vehicle and the driver of the offending vehicle had no valid and effective driving licence, for which, it is not liable to pay any compensation. The Insurance Company had also disputed the age and income of the deceased and taken a plea that the claim is barred by limitation and the petitioners have no cause of action to file the claim petition.

5. After taking into consideration both oral and documentary evidence, the learned Tribunal has framed as many as four issues and held that the accident was caused due to negligence of the driver of the offending

vehicle and the claimant-petitioners are entitled to get compensation of Rs.50,000/- from the Insurance Company.

6. Mr. A.K. Behera, learned counsel appearing for the appellants submits that the finding of the Tribunal that the claimants have failed to prove that the accident was caused due to negligence of the driver is not correct in view of his categorical finding of learned Tribunal that the witnesses stated that at the relevant time the tractor came from opposite side and dashed against the deceased and as a result of which the vehicle capsized under which the deceased was pressed. Therefore, he submits that the Tribunal has erred in not treating the petitioners' case for grant of compensation under Section 166 read with Section 168 of the M.V. Act.

7. Mr. S.R. Pattnaik, learned counsel appearing on behalf of Respondent No.2-National Insurance Company Ltd. submits that there is discrepancy in the evidence of P.W.1 and P.W.2 so far as the time of accident is concerned. Moreover, negligence on the part of the driver has not been proved. Therefore, the learned Tribunal is fully justified in granting Rs.50,000/- under no fault liability as provided under Section 140 of the M.V. Act.

8. On the rival contentions of the parties, the only question that falls for consideration by this Court is as to whether the Tribunal is justified in holding that the claimant-appellants have failed to establish that the accident was caused due to negligence on the part of the driver of the offending vehicle for which the petitioner-appellants are only entitled to get Rs.50,000/- under Section 140 of the M.V. Act.

9. Perusal of the impugned award reveals that the accident took place due to negligent driving of the driver but the learned Tribunal has come to the conclusion that the accident was not caused due to negligence of the driver basing upon the evidence of P.W.1 and P.W. 2, where there is discrepancy with regard to the time of accident. At the same time, the Tribunal has also held in Paragraph-10 of the impugned award as follows:

“Thus, P.Ws.1 and 2 differ from each other as to the time when the accident was taken place; whether the accident was taken place while the deceased was going to the farm to attend the work or the deceased was returning from the farm after attending the work. Had P.Ws.1 and 2 seen the accident, such difference in evidence would not have arisen. This is one aspect of the matter. The other aspect is even if their evidence is accepted to be true, it did not disclose the negligence on the part of the driver of the offending vehicle resulting the accident. They simply stated that on the relevant date, the tractor came from opposite party direction and dashed against the deceased and thereafter the vehicle was capsized under which he was pressed. The way in which the evidence was laid did not suggest any negligence on the part of the offending vehicle. Mere saying that the vehicle came from opposite direction and dashed against the deceased would not suffice the purpose to infer negligence.”

10. Thus, it is clear from the evidence of P.Ws. 1 and 2 that the tractor came from opposite direction and dashed against the deceased and thereafter the vehicle was capsized under which the deceased was pressed. It is nobody's case that anything contrary to the above evidence of P.Ws 1 and 2 was elicited from their mouth. Considering the nature of work that the deceased was working as Legal Advisor-cum-Supervisor of the Company no adverse view can be inferred from the evidence of PWs 1 and 2 if they differ from each other as to whether the accident took place while the deceased was going to the farm to attend the work or he was returning from the farm

after attending the work. It is also nobody's case that there is any difference about the time of the occurrence. Considering that the deceased was working as a Legal Advisor-cum-Supervisor of the Export Company, normally he is not required to attend the office like a daily wage earner or clerical staff etc.

11. In view of the above, this Court is of the view that the Tribunal is not justified to hold that the claimant-appellants have failed to establish that the accident was caused due to negligence on the part of the driver of the offending vehicle for which they are entitled to get Rs.50,000/- under no fault liability as provided under Section 140 of the Act. It is not a fit case to grant compensation under no fault liability under Section 140 of the Act. Therefore, the matter is remanded back to the Tribunal to reexamine the matter and dispose of the same afresh after affording opportunity of hearing to the parties in accordance with law within a period of four months from the date of production of certified copy of this judgment.

12. With the aforesaid observation and direction, the appeal is disposed of.

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B.N.Mahapatra, J