

Jayanti Sahu and ors. Vs. Rama Chandra Behera and ors.

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Court : Orissa

Decided On : Aug-03-1999

Reported in : II(2000)ACC389; 2001ACJ506; 89(2000)CLT430

Judge : D.M. Patnaik, J.

Appeal No. : M.A. No. 585 of 1994

Appellant : Jayanti Sahu and ors.

Respondent : Rama Chandra Behera and ors.

Advocate for Def. : A.K. Pradhan and ;B.P.R. Das, Advs.

Advocate for Pet/Ap. : S.K. Mohanty, Adv.

Disposition : Appeal allowed

Judgement :

D.M. Patnaik, J.

1. The legal heirs of one Dharanidhar Sahu, the deceased, have approached this court in appeal being dissatisfied with the amount of compensation awarded by the 2nd Motor Accidents Claims Tribunal, Berhampur.

2. Claimants' case is, on 18.6.90 around 4.30 a.m. while deceased Dharanidhar was travelling in a mini truck bearing registration No. ORF 3364 with his goods,

the said truck met with an accident on account of rash and negligent driving of the driver of the vehicle. The owner as well as the insurance company contested the case. The owner of the vehicle admitted that the deceased was travelling in the vehicle, but took the plea that he was travelling as a coolie but not as a person accompanying his goods. The insurance company apart from denying the factual facts also took the statutory defence that though the policy covered the insurance as on the date of accident, yet the insurance policy did not cover the insurance for loss of life of a person travelling in the goods vehicle.

3. The learned Tribunal framed the following issues:

(1) Whether the vehicle bearing registration No. ORF 3364 (mini truck) was being driven in a rash and/or negligent manner causing death of Dharanidhar Sahu?

(2) Whether the petitioners are entitled to compensation and, if so, what should be the quantum thereof?

(3) Whether the claim is entertainable as against all or any of the respondents?

(4) To what relief?

4. The learned Tribunal on analysis of the evidence of materials on record found that the deceased died as a result of the accident of the vehicle and that the accident was on account of rash and negligent driving of the driver of the vehicle. The Tribunal fixed compensation of Rs. 1,16,000 taking a multiplier of 16 years. The claimants' case is that this compensation is to be paid by the insurance company and not by the owner, which is wrongly so held by the Tribunal.

5. Mr. Mohanty appearing on behalf of the appellants has strenuously urged that in view of the recent Supreme Court decision the multiplier of 16 years should be considered for 18 years looking to the fact that the deceased was 35 years of age. Mr. B.P.R. Das, learned counsel for the insurance company, on the other hand, has strenuously urged that since the Tribunal after considering all materials on record has taken 16 years as multiplier and there is nothing to indicate that the approach is wrong and is in any way contrary to law the same should not interfered with.

6. After hearing the learned counsel for the parties on this point I find that the dependants of the deceased were about six in number and the impugned order also shows that the Tribunal has resorted to some guess with regard to the income of the deceased. Though no fault can be found out for fixing 16 years multiplier in the present case, yet considering the number of dependants and further considering that the Tribunal has found the deceased to have been engaged in a business, I find that it would be rather appropriate to raise the amount of compensation to a further sum of Rs. 10,000 on the score of general damages, i.e., loss of love and affection, etc., and I feel this would also meet the ends of justice.

7. Mr. Das, learned counsel for the insurance company, however, referring to the amended provisions of Section 147 of the Motor Vehicles Act strenuously urges that since the accident took place before 1994 amendment of Section 147, the question of covering an accident with regard to any person travelling in a goods vehicle will not be applicable in the present case.

Mr. Mohanty, on the other hand, referred to a decision of this court in the case of Divisional Manager, Oriental Insurance Co. Ltd. v. Jasoda Mohanta 1997 ACJ 284 (Orissa), thereby drawing a distinction between the old provisions under Section 95 of the old Act and the parallel provision under Section 147 of the new Act and submits that the finding of the learned Tribunal that the amount should be recovered from the owner is wrong, but should be from the insurance company.

8. I have gone through the impugned order. I have also gone through the judgment of my learned brother P. Ray, J. in the case referred to above. My attention is also drawn by Mr. Mohanty to the decision of the Supreme Court in the case of Mallawwa v. Oriental Insurance Co. Ltd. 1999 ACJ 1 (SC).

The claimants averred in the claim petition that the deceased was travelling in the truck with the goods. This fact has not been controverted by the insurance company which took the stand that the deceased was a coolie in the truck. The Tribunal has given a finding that the deceased was travelling in the truck. Since the averment in the petition has not been controverted by specific denial and that the Tribunal has held that the deceased was travelling in the truck, I hold that he

was travelling with his goods in the said truck.

On going through the two judgments cited by Mr. Mohanty, there should not be any doubt that the definition of 'any person' has been dealt with to be considered liberally so as to include a person travelling with his own goods. Therefore, the appeal has to succeed.

9. In the result, the appeal is allowed. The award of Tribunal is set aside. The insurance company is made liable to pay the compensation awarded and not the owner within a period of three months failing which interest at the rate of 12 per cent shall be charged thereon till final payment. No costs.

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