

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.109 of 2004

(From the judgment dated 12th January, 2004 passed by learned M.A.C.T., Kalahandi-Nuapada, Bhawanipatna in M.J.C. No.41 of 1992)

Moti Sagari

....

Appellant

-versus-

State of Orissa and others

....

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. P. Behera, Advocate

For Respondents : Mr. B. Panigrahi, A.S.C.
For Respondent Nos.1 & 2

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

3rd November, 2022

B.P. Routray, J.

1. Present appeal by claimant is directed against the judgment dated 12th January, 2004 of learned M.A.C.T., Kalahandi-Nuapada, Bhawanipatna passed in M.J.C. No.41 of 1992, wherein learned Tribunal has dismissed the claim application on contest.

2. The deceased-Siba Nag is a minor boy aged about 13 years. The claimants are the parents of the deceased. Claimant No.1, the father of the deceased died during pendency of the claim application. Claimant No.2, present Appellant is the mother of the deceased Siba Nag.

3. According to the claimants, on 28.9.1991, the deceased was coming in the Dala of the Truck bearing Registration No. ORK 5539 (the offending vehicle). Near Benakhamar colony under T. Rampur P.S. in the district of Kalahandi, the offending vehicle capsized due to rash and negligent driving of the driver and as a result of the same, the deceased was crushed under rear wheel of the offending vehicle. The deceased died at the spot. So the claimants pray for compensation of Rs.1,50,000/- alleging death of the deceased due to rash and negligent driving of the driver of the offending vehicle as the cause of accident.

4. The offending vehicle belongs to State of Odisha and its registered owner is the Superintending Engineer, Irrigation Department (Respondent No.1). It was under the management of the Executive Engineer, Padaguda Dam Division, Khatiguda, Nabarangpur (Respondent No.2) on the date of accident. The driver of the offending vehicle was arrayed as Opposite Party No.3 before learned Tribunal, who is present Respondent No.3.

5. All the Opposite Parties contested the claim by filing their W.S. It is their consistent case that at the relevant place without the knowledge of the driver, the deceased boy tried to climb up the Dala and fell down to sustain injuries. The driver by filing separate written statement has denied the rash and negligent driving on his part.

6. Learned Tribunal upon adjudication refused to hold any negligence on the part of the driver for the accident and accordingly refused to grant any compensation in favour of the claimants.

7. The same is challenged by the claimants stating that the learned Tribunal is erred in law by relying on the judgment of acquittal of the driver in the criminal prosecution to exonerate him from the negligence for the cause of cause of accident.

8. It is seen that two witnesses were examined from the side of the claimants and copies of the police papers were adduced in support of their contentions. The Opposite Parties including the driver did not examine any witnesses, but the judgment of acquittal passed by the criminal court was relied on by the driver in support of his contention.

9. It is true that the principles of strict proof do not apply to a case of motor vehicular compensation. The judgment of acquittal passed in a criminal case has lesser impact to a motor accident compensation case to decide negligence on the part of the driver. These are two different natures of proceedings. The settled principle is that, the evidence in a compensation case is to be appreciated on the touchstone of preponderance of probability and not by the standard of proof beyond reasonable doubt applicable to criminal case.

10. Further the Supreme Court in the case of ***Om Parkash Batis vs. Ranjit***, 2008 ACJ 1700 (SC) have held that the claim application filed under the M.V. Act is summary in nature and the provisions of the C.P.C. or Evidence Act are not strictly applicable to such proceeding.

11. What is required to be established is on the touchstone of preponderance of probability. In the instant case, amongst two such witnesses examined for the claimants, P.W.1 is the mother of the

deceased and she is not the eye-witness. P.W.2 is stated to be the eye-witness of the accident. As per P.W.2, he saw the offending vehicle at the spot while the deceased was an occupant in the Dala of that vehicle. According to said P.W.2, the offending vehicle suddenly capsized at the spot coming in high speed and the deceased died at the spot. During cross-examination, hardly anything could be elicited to controvert his statement except some denial suggestions.

12. The FIR was lodged by the elder brother of the deceased. He was not examined by the claimants. As per contents of the FIR, the deceased was an occupant of Dala of the Truck (offending vehicle) and due to rash and negligent driving of the driver, he fell down and the rear wheel crushed over his head. So the capsizing of the offending vehicle as per the statement of P.W.2 is not supported in the contents of the FIR. But what is seen consistent between the FIR and in the statement of P.W.2 is that, the deceased was an occupant of the Dala of the offending vehicle.

13. Now the question arises that, whether such occupation of the deceased in the Dala of the truck was within the knowledge of the driver ?

It is the consistent case of the driver and all other Opposite Parties that without the knowledge of the driver, the deceased climbed to the Dala. The Dala of the offending vehicle at the time of accident was loaded with frames of the doors and windows. Neither P.W.2 nor P.W.1 says in their evidence about conscious knowledge of the driver regarding occupation of the deceased in the Dala. The content of the FIR also does not speak about the same. Climbing up of the deceased

into the Dala of the truck is never whispered by any of the witnesses to be within the knowledge of the driver. At the time of accident, the deceased was a minor boy aged about 13 years only according to his mother (P.W.1). So the probability of getting into the Dala of the offending vehicle by the deceased in a childish attitude cannot be completely ruled out. When the evidence of the claimants is silent on the plea of the driver that such occupation of the deceased in the Dala of the vehicle was not within his conscious knowledge, the preponderance of probability is in driver's favour. If capsizing of the vehicle and knowledge of the driver about occupation of the deceased in the Dala is not established, then falling of the deceased from the Dala due to negligent driving of the driver is also not established. As such, rash or negligent driving on the part of the driver for the cause of accident, which is *sine qua non* for maintaining the claim of compensation, is not established. Therefore, the claim of compensation is not maintainable against the Opposite Parties (Respondents) and the present claim application filed under Section 166 of the M.V. Act has been rightly dismissed by the learned Tribunal.

14. In the result, the appeal is dismissed being devoid of merit.

(B.P. Routray)
Judge

B.K. Barik/Secretary