

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.308 of 2004

Sri Laxmidhar Sahu

....

Appellant

Mr. D. Pattanaik, Advocate

-versus-

Subash Sekhar Panda and others

....

Respondents

Mr. S.K. Sarangi, Advocate for Respondent No.3

Mr. S.K. Swain, Advocate for Respondent No.4

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

09.02.2022

Order No.

14.

1. Heard Mr. D. Pattanaik, learned counsel for the Appellant-claimant, Mr. S.K. Sarangi, learned counsel for the Respondent No.3-New India Assurance Co. Ltd and Mr. S.K. Swain, learned counsel for the Respondent No.4-Oriental Insurance Co. Ltd.

2. The present appeal by the claimant-Appellant arises out of a common judgment dated 19.3.2004 passed in MAC No.44/17 of 1999-2001. The impugned judgment is common in the sense that it deals with three cases, viz., MAC No.130/17 of 1999-2000, MAC No.44/17 of 1999-2001 and MAC No.96/04 of 1998-2002.

However, the claimant, namely, Laxmidhar Sahu in MAC No.44/17 of 1999-2001 is the Appellant in the present appeal.

3. Mr. S.K. Sarangi, learned counsel for the Respondent No.3 and Mr. S.K. Swain, learned counsel for the Respondent No.4

submits upon instruction that other two claimants have not preferred any appeal.

4. The case of the present claimant, Laxmidhar Sahu is that while he was moving in the Bus bearing Registration No.ORW-2121, the same had collided with the Truck bearing Registration No.WB-03-1993 in the front. The Appellant sustained multiple injuries over his left leg, right hand, left chest and other body parts.

5. Learned Tribunal upon adjudication came to the finding that the Truck had no negligence to the cause of accident, but the driver of the Bus is solely negligent in causing the accident. Thus the owner of the Truck was exonerated from payment of any compensation and the entire negligence was fixed on the driver of the Bus. However, the Bus was not found validly insured on the date of the accident and as such, the owner was burdened to pay the compensation to the tune of Rs.69,680/- to the present Appellant along with 6% interest per annum from the date of application.

6. It is submitted by the Appellant that the finding of the learned Tribunal completely exonerating the driver of the Truck from the negligence is not justified. As per the Appellant, the driver of the Truck is equally negligent with the driver of the Bus for contributing to the cause of accident. However, the appellant did not receive any compensation from the owner of the Truck yet.

7. After hearing Mr. S. K. Sarangi, learned counsel for the Respondent No.3, who is the insurer of the Bus (though the Bus was not validly insured on the date of accident) and Mr. S.K. Swain, learned counsel for the Respondent No.4, the insurer of the Truck and upon perusal of the impugned judgment, it reveals that the learned Tribunal has based his conclusion on the report of the local MVI, who was examined as OPW-2. It is true that said OPW-2 has opined upon verification of the spot and both the vehicles that since the Bus while overtaking another vehicle went to extreme right-side of the road resulting front collision with the Truck which was coming from the opposite direction. Relying on the said reasoning explained by the MVI, learned Tribunal has completely exonerated the Truck driver from the negligence.

8. Admittedly, this is a case of front collision and both the vehicles were moving. Under the principles of *res ipsa loquitor* vis-à-vis position of both vehicles, the driver of the Truck cannot be completely exonerated from the negligence, even accepting the fact that the Bus went to extreme right side of the road resulting collision. Since this is admittedly a case of composite negligence, in the given situations of the case and considering all such facts brought on record, the negligence on the part of the drivers of the Bus and the Truck would be 60:40. Accordingly, the owner of the Truck is held vicariously liable to bear the compensation to the extent of 40%.

9. Accordingly, Respondent No.4, who is the admitted insurer of the Truck, is liable to indemnify amount of compensation on

behalf of the owner of the Truck to the extent of 40% as directed by the learned Tribunal.

10. Consequently, Respondent No.4 – the Oriental Insurance Company Limited is directed to pay 40% of the amount of the compensation as directed by the learned Tribunal along with interest @6% per annum from the date of filing of the claim application within a period of eight weeks from today which shall be disbursed to the claimant-Laxmidhar Sahu.

11. The MACA is disposed of.

12. An urgent certified copy of this order be granted on proper application.

