

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.981 of 2013

MACA No.981 & 980 of 2013

***Orissa State Road Transport
Corporation, Paribahan Bhawan,
Bhubaneswar***

***Appellant
in both the
appeals***

Mr. Braja Kishore Sahoo, Advocate in both appeals

-versus-

Motin Prava Patra & Others

(In MACA No.981/2013)

Sabitri Rana and Others

(In MACA No.980/2013)

Respondents

Mr. K.K. Das, counsel for claimant –
Respondents in both the appeals

**CORAM:
SHRI JUSTICE B. P. ROUTRAY**

**ORDER
14.11.2022**

Order No.

- 09.
1. The matters are taken up through hybrid mode.
 2. Heard Mr. B.K. Sahoo, learned counsel for the OSRTC (Corporation) and Mr. K.K. Das, learned counsel for the claimant-Respondents.
 3. Mr. Das, learned counsel for the claimants submits that in MACA No.980 of 2013 the claimant – Respondent No.2, namely Bikali Charan Rana died in the meantime on 24th March, 2016 and all other LRs being already on record, no substitution is required.

4. Both the appeals being arise out of same common judgment, are heard together and disposed of by this common order.

5. Both the appeals by the Corporation are against the same impugned judgment dated 23rd November, 2012 of learned 2nd MACT, Cuttack passed in Misc. Case No.370 and 371 of 1993. MACA No.981 of 2013 is in respect of Misc. Case No.370 of 1993, wherein compensation to the tune of Rs.3,70,300/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 12th May, 1993 has been granted on account of death of deceased Hrusikesh Patra in the motor vehicular accident dated 6th April, 1993. MACA No.980 of 2013 is in respect of Misc. Case No.371 of 1993, wherein compensation to the tune of Rs.3,38,972/- along with interest @ 6% per annum from the date of filing of the claim application, i.e. 12th May, 1993 has been granted on account of death of deceased Daitari Rana in the same motor vehicular accident.

6. Mr. Sahoo, learned counsel for the Corporation questions the negligence fixed on the driver of the offending bus. As per him, the entire negligence fixed on the driver of the bus completely reversing the earlier finding dated 26th September, 2007 of the same Tribunal is untenable and misconceived.

7. It needs to be mentioned here that the tribunal had earlier disposed of both the claim application by passing 'nil award' on 26th September, 2007. The same was challenged by the claimants in MACA No.208 and 209 of 2004 before this Court. This Court by order dated 8th January, 2009 remanded the matter back to the tribunal

for *de novo* disposal. Thereafter, present impugned award dated 23rd November, 2012 has been passed by the tribunal.

8. From perusal of the copy of order dated 8th January, 2009 of this court passed in MACA No.208 and 209 of 2004 it is seen that the same was an open remand for fresh adjudication of the claim applications. Therefore, what is contended by Mr. Sahoo that the negligence fixed earlier on the driver of the scooter (one of the deceased) has no merit for consideration. This court in its earlier order has further observed that the tribunal has not considered all the evidence in proper perspective. So, no point is seen in favour of contention of Mr. Sahoo to fix any contributory negligence on the driver of the scooter against the finding of the tribunal in the present impugned judgment.

9. The facts of the case reveal that both the deceased persons, namely Hrusikesh Patra and Daitari Rana were moving in the scooter bearing registration number OR 04 3204 and the accident took place due to front collusion of the scooter with the offending bus bearing registration number OR 05 8945. In the accident both the riders of the scooter died.

10. Five witnesses were examined from the side of the claimants and two witnesses were examined from the side of Opposite Party – Corporation. Besides that a bunch of documents including police papers were adduced from the side of the claimants. The report of MVI dated 12th April, 1993 and the report of Opposite Party No.2

dated 15th April, 1993 were adduced in evidence from the side of the Opposite Party (present appellant) in support of their stand.

11. The entire contention of Mr. Sahoo is regarding negligence aspect. Mr. Sahoo submits that since the accident was a front collusion, where the MVI has stated that the riders of the scooter were moving in higher speed, contributory negligence at least to the extent of 50% ought to have been fixed on the deceased persons.

12. It is seen that, P.W.5 is the informant who lodged the F.I.R. under Ext.1. He was an eye-witness to the accident. Besides him, P.W.3 and P.W.4 are two other eye-witnesses to the accident. They all have stated consistently that the accident took place due to rash and negligent driving of the driver of the offending bus. On the other hand, O.P.W.1, who was one of the officers of Opposite Party – Corporation, claims that he was travelling in the same offending bus at the time of accident and as per him, the accident took place due to negligence of the driver of the scooter while overtaking a truck. As per Ext.A, the MVI in his enquiry report has stated that the right front wheel of the offending bus was about 6 feet from the left side of the road and the scooter was at 5 feet from its left edge of the road. Nothing has been mentioned in the MVI report about overtaking of the truck by the driver of the scooter at the time of accident. Similarly, O.P.W.2 in his report under Ext.B has not mentioned anything about overtaking of the truck. Both the reports under Ext.A and B suggest that since the scooter was in the middle of the road, the accident took place due to wrong judgment of the drivers.

13. At the same time, it reveals from the police investigation report as well as the contents of the F.I.R. that, the accident took place due to negligent driving of the driver of the offending bus. The police accordingly submitted charge-sheet against the driver of the offending bus for commission of offence under Sections 279/337/338/304-A of the I.P.C. Therefore, the contention of the claimants being found supported with the findings of the police investigation report, the preponderance of probability is seen in favour of the claimants that the accident took place due to negligence of the driver of the bus. Moreover, no negligence can itself be attributed on the driver of the scooter as contended by Mr. Sahoo for the mere reason that the accident was a front collision. When police has submitted its report against the driver of the bus, prima facie negligence is satisfied on the part of the driver of the offending bus. Accordingly, on the touchstone of the principles of preponderance of probability, the tribunal has approached rightly in fixing negligence on the driver of the offending bus and no fault is seen therein to interfere with.

14. Mr. Sahoo does not raise any objection towards the quantum of compensation. Upon perusal of the impugned judgment also no such flaw in computation of quantum of compensation is seen.

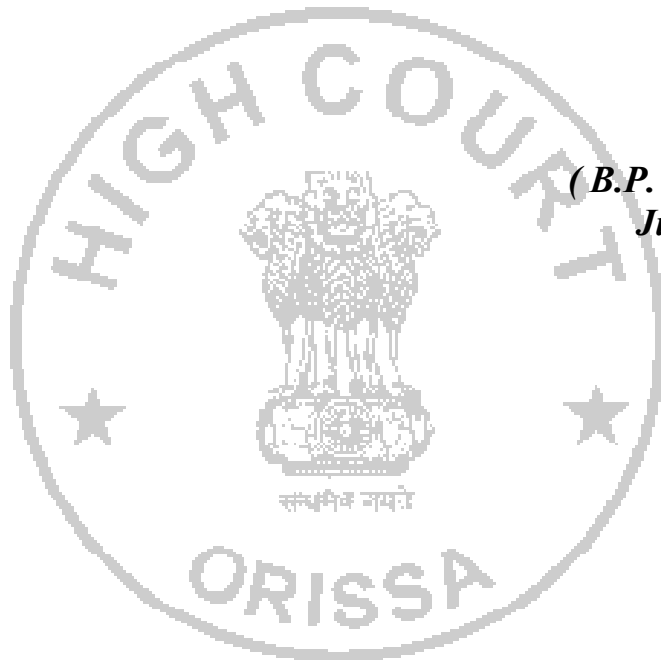
15. In the result both the appeals are dismissed and the Appellant – OSRTC is directed to deposit the entire compensation amount along with interest before the tribunal in terms of its direction within a period of two months from today; where-after the same shall be disbursed in favour of respective claimants (except claimant – Respondent No.2 in MACA No.980 of 2013, namely, Bikali Charan

Rana) on same terms and proportion as contained in the impugned award.

16. The statutory deposit made by the Corporation in both the appeal before this court along with accrued interest be refunded on proper application and on production of proof of deposit before the tribunal.

17. An urgent certified copy of this order be issued as per rules.

M.K.Panda



(B.P. Routray)
Judge