

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1055 of 2015

Sureswari Tandia and others

....

Appellants

Mr. K.C. Nayak, Advocate

-versus-

Ganesh Tandia and another

....

Respondents

Mr. A.A. Khan, Advocate for Respondent No.2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

24.08.2022

Order No.

07.

1. Heard Mr. K.C. Nayak, learned counsel for the Appellants-claimants as well as Mr. A.A. Khan, learned counsel for Respondent No.2-Insurance Company.
2. Present appeal by the claimants is directed against judgment dated 23.06.2015 of learned 4th M.A.C.T., Cuttack in MAC Case No.22 of 2012/153 of 2015 wherein compensation to the tune of Rs.1,97,000/- has been granted along with interest @6% per annum to the claimants from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 09.01.2012.
3. It is contended on behalf of the Appellants that the learned Tribunal has erroneously fixed contributory negligence to the extent of 50% on the deceased against the evidence adduced by P.W.2 and has committed further error in computation of the compensation amount by deducting 1/3rd instead of 1/4th of the income towards personal expenses. Further, the Tribunal has failed to add future prospects to the extent of 40%.

4. Upon hearing Mr. A.A. Khan, learned counsel for the Respondent No.2-Insurance Company and perusal of the impugned judgment, it reveals that the Tribunal while discussing under Issue No.1 has though opined against the evidence adduced by P.W.2 – another eye-witness to the accident, still has failed to give any concrete finding with regard to negligence on the part of the driver of the motorcycle. It is seen that as per the evidence of P.W.2, the deceased was the pillion rider, who fell down due to the negligence of the driver. Against the same, the FIR, charge-sheet and other police papers reveals that upon investigation by the Police, it was found that the deceased himself was driving the motorcycle. The owner by coming to the witness box examined himself as OPW-1 and as per him, he gave the motorcycle to one Sisir Kumar Bhoi. Upon a detailed discussion, the learned Tribunal has though doubted the story advanced by the claimants about the fact that the deceased was riding as a pillion in the motorcycle at the time of accident, but has failed to give any conclusive finding with regard to negligence on the part of any other alleged driver of the motorcycle other than the deceased. However, the learned Tribunal at the end has concluded that the owner is vicariously liable to pay the compensation amount to the extent of 50%, indemnifiable by the insurer.

5. Mr. K.C. Nayak contends for the claimants-Appellants that in such scenario the opinion of the Tribunal for 50% negligence on the part of the owner is not sustainable because either it would have fixed the entire negligence or completely discard out the same from the owner. But such direction of the Tribunal in

respect of contributory negligence to the extent of 50% on the part of the owner is not sustainable.

6. I am not convinced with such reasoning advanced by Mr. Nayak. A thorough perusal of the impugned judgment reveals that the learned Tribunal has though in the opinion that the deceased was the driver of the motorcycle at the time of accident, but avoided to give any such conclusive finding on the same. Rather it chose to contribute 50% negligence only on the deceased for the cause of the accident. This approach of the Tribunal is though not appreciated but in absence of any challenge from the side of the insurer, this Court refrains from giving any further opinion on the same. Nevertheless in the circumstances, no reason is found to interfere with the award at the behest of the claimants in their favour.

7. Accordingly, the other contention with regard to quantum of compensation is not required to be discussed with because this Court is not satisfied with the extent of negligence divided between the owner and the deceased.

8. Resultantly, the appeal is dismissed.

(B.P. Routray)
Judge