

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.954 of 2015

Jogi Behera and others

....

Appellants

Mr. P.C. Pattnaik, Advocate

-versus-

Abdul Gafur Sariff and another

....

Respondents

Mr. P.K. Mahali, Advocate for Respondent No.2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

22.07.2022

Order No.

M.C. No.1165 of 2016

04.

1. Heard Mr. P.C. Pattnaik, learned counsel for the Appellants as well as Mr. P.K. Mahali, learned counsel for Respondent No.2.

2. Upon hearing both the parties and considering the grounds mentioned in the petition, the delay in filing the appeal is condoned.

3. The misc. case is disposed of.

MACA No.954 of 2015

4. Heard Mr. P.C. Pattnaik, learned counsel for the Appellants-claimants as well as Mr. P.K. Mahali, learned counsel for Respondent No.2-Insurance Company.

5. Present appeal by the insurer is directed against judgment dated 13.02.2015 of learned 4th M.A.C.T., Puri in M.A.C. No.118

of 2007 wherein learned Tribunal has refused to grant any compensation in favour of the claimants.

6. The case of the claimants, who are the parents and siblings of the deceased-Pramod Behera, before the learned Tribunal is to the effect that on 13.4.2007 in the night around 11.00 p.m. when the deceased was coming by riding a motorcycle bearing Registration No.OR-02-AJ-8015, the offending truck bearing Registration No.OR-07-C-0578 all of sudden in high speed in a rash and negligent manner overtook the motorcycle and abruptly stopped on the road. As a result of this, the deceased, who was riding the motorcycle, dashed at the back side of the truck. Due to the accident, the driver of the motorcycle as well as the pillion rider both died.

7. In course of adjudication before the Tribunal, the claimants in order to prove their case examined 15 witnesses and out of them P.Ws.1 & 3 are stated to be the eye-witnesses of the accident. The FIR was lodged by P.W.2, the father of the deceased, which was registered as Jatani P.S. Case No.88 dated 14.04.2007 for commission of offences under Sections 279/304(A), I.P.C. The Police in its investigation report dated 24.4.2008 submitted the final form opining that the negligence is on the part of the driver of the motorcycle, i.e. the deceased. Learned Tribunal upon analysis of the evidence of the witnesses, particularly P.Ws.2 and 3, concluded that the deceased, who was the driver of the motorcycle, was negligent for causing the accident and accordingly refused to grant compensation in favour of the claimants.

8. It is submitted on behalf of the Appellants-claimants that the learned Tribunal has failed to appreciate the oral evidence adduced by P.W.3, the eye-witness, who was coming at that spot in another Car just behind the motorcycle. Despite his clear and categorical evidence, the learned Tribunal has disbelieved the case of the claimants to deny grant of compensation.

9. Conversely, it is submitted by Mr. Mahali, learned counsel for the Respondent No.2-Insurance Company that the conclusion arrived at by the learned Tribunal is without fault and the Police had also given in its investigation report in the same line opining negligence on the part of the deceased as the driver of the motorcycle for the cause of accident.

10. The copies of the evidence adduced by P.Ws.1, 2 & 3 are produced by the Appellants in course of hearing. The same be kept on record. Perusal of the evidence of P.Ws.1 & 3 specifically reveals that the driver of the truck after overtaking the motorcycle suddenly stopped on the road without any indication resulting the accident. In the cross-examination, said P.W.3 has specifically stated that the truck was coming at a speed of 70 km. per hour approximately and the motorcycle was in normal speed. As seen from the discussions of the learned Tribunal under Issue Nos.2 and 3 that, it disbelieved the evidence of P.W.3 stating that in the dead of night it was not possible for the driver of the Car which was coming behind the motorcycle to know the exact reason of accident. It is further observed by the Tribunal that in absence of convincing material and in absence of any charge-sheet against

the driver of the truck, the negligence on the part of the driver of the truck is not established, rather the negligence on the part of the deceased as the driver of the motorcycle is established.

11. Admittedly no evidence has been adduced from the side of the insurer in rebuttal. The statement of the eye-witness-P.W.3 is very specific to the effect that the truck suddenly applied brake and stopped on the road. There is no material brought on record to reveal that any indication was given before halt of the truck on the road. So it is quite natural on the part of the motorcycle driver to overcome such sudden stoppage of the truck after overtaking. So far as the finding of the learned Tribunal to disbelieve the evidence of P.W.3 is concerned, the same cannot be accepted by this Court for the reason that in the night, the headlight of the car was illuminated lighting front area of the vehicle and that, the Car was behind the truck. So it is quite obvious on the part of the driver of the Car to see the accident. As such, negligence on the part of the driver of the truck for causing the accident is established, and the findings against the deceased-driver of the motorcycle are accordingly set aside.

12. Next it comes to decide the entitlement of compensation by the claimants being the dependants of the deceased-Pramod Behera. Before that, it is important to discuss about validity of insurance policy of the truck.

13. Mr. P.K. Mahali, learned counsel for the Respondent No.2- Insurnace Company does not dispute validity of insurance policy of the truck. Further the permit of the truck and DL of the driver

is also not disputed. Moreover, the DL of the driver of the truck has been marked as Ext.4 before the learned Tribunal. Accordingly Respondent No.2 is held liable to indemnify the compensation amount, if any, for the owner of the offending truck bearing Registration No.OR-07-C-0578.

14. Now coming to the question of quantum of compensation, It is seen that the deceased-Pramod Behera was aged about 30 years on the date of accident and he was unmarried. It is the further case of claimants that the deceased was earning Rs.3000/- per month by working as skilled labourer. Since this is a case of the year 2007, so without going into all details for computing the compensation but keeping in view the relevant factors like age, income, multiplier and status of the deceased as a bachelor etc, a total compensation of Rs.4,00,000/- along with interest @6% per annum from the date of filing of the claim application is proposed to the parties. Mr. Pattnaik, learned counsel for the claimants-Appellants agrees with the same and Mr. Mahali without disputing such amount leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

15. In the result, the Appellant-Insurance Company is directed to pay total compensation of Rs.4,00,000/- (rupees four lakhs) along with interest @6% per annum from the date of filing of the claim application by depositing the same before the learned Tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimants on such terms and proportion to be decided by the learned Tribunal.

16. It is submitted by Mr. Mahali that the date of filing of the claim application is 9.5.2007. However, learned Tribunal is directed to verify the same.

17. It is further submitted by both the parties that an amount of Rs.50,000/- has already been received by the claimants against no fault liability. If such amount has already been paid to the claimants, the same shall be adjusted from the compensation amount.

18. The appeal is disposed of as allowed.

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

(B.P. Routray)
Judge