

Minu Rout & Anr vs Satya Pradyumna Mohapatra & Ors on 2 September, 2013

Equivalent citations: 2013 AIR SCW 5375, 2013 (10) SCC 695, 2013 AAC 3091 (SC), AIR 2013 SC (SUPP) 62, 2014 (1) SCC (CRI) 384, (2014) 2 MAH LJ 534, (2014) 117 CUT LT 256, (2014) 2 MPLJ 129, (2013) 4 TAC 840, (2013) 101 ALL LR 229, (2013) 2 ORISSA LR 911, (2013) 6 ALL WC 5441, (2013) 4 JCR 351 (SC), (2013) 4 CURCC 15, (2013) 11 SCALE 112, (2013) 4 ACJ 2544, (2013) 2 WLC(SC)CVL 587, (2013) 130 ALLINDCAS 17 (SC), (2013) 4 RECCIVR 871, AIR 2014 SC (CIVIL) 116

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Bench: V. Gopala Gowda, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7368 OF 2013
(Arising out of SLP (C) No. 31402 of 2011)

MINU ROUT & ANR.

... APPELLANTS

VS.

SATYA PRADYUMNA MOHAPATRA & ORS.

... RESPONDENTS

J U D G M E N T

V. Gopala Gowda, J.

Leave granted.

2. This appeal is filed by the appellants who were claimants before the Additional District Judge-cum-4th MACT, Jagatsinghpur, Odisha (in short 'the Tribunal') in MAC case No.6 of 2005, questioning the correctness of the judgment and award dated 27.07.2011 passed by the High Court of Orissa, Cuttack in MACA No. 594 of 2010, wherein it has affirmed the judgment and award of the Tribunal holding that the award of compensation of Rs.2,00,000/- in favour of the appellants along with interest at the rate of 6% per annum from the date of filing of the claim application till actual

payment, is legal and valid and the same is not vitiated either on account of impropriety or illegality. The correctness of the same is challenged in this appeal urging certain relevant facts and grounds.

3. Brief facts of the case are mentioned hereunder for the purpose of appreciating the case and to examine whether the appellants are entitled for enhancement of compensation claimed by them in this civil appeal. The first appellant is the wife of the deceased Susil Kumar Rout and the second appellant is the son of the deceased (minor at the time of the accident). On account of a head on collision between the car of the deceased bearing registration No. OR 09 C 6463 and a truck bearing registration No. OR 09 C 7165 on National Highway 5 near Urauli Chhaka on 08.11.2004, the deceased sustained injuries and was declared brought dead at Jajpur Hospital. It is the case of the appellants that the road was wide and spacious and the accident was due to the rash and negligent driving of the driver of the offending truck. It is claimed by the appellants that at the time of the accident, the deceased was having good health and was earning a sum of Rs.5000/- per month which was mostly contributed to the appellants for their livelihood.

4. During the time of hearing, the owner of the truck was arrayed as a party and was served with notice but he remained absent and did not contest the proceedings. Respondent No. 1, the driver also did not file any counter statement despite notice being served on him and he was set ex-parte. Respondent No.2, the New India Assurance Company filed its statement of counter opposing the claim of the appellants taking the plea that the claim petition is not maintainable and the claim is barred by limitation. The averments regarding the age and income of the deceased were denied, and so also, the averments regarding the manner in which the accident occurred as described in the claim petition. It was pleaded by the Insurance Company that the averments made by the appellants in the claim petition regarding the manner in which the accident took place are false and fabricated. They have claimed that the accident was not due to sole negligence of the driver of the offending truck, by placing strong reliance upon the charge-sheet filed by the Dharmasala police, who seized both the vehicles. Therefore, it is stated that both the drivers of the car and the truck were responsible for causing accident amounting to contributory negligence on the part of the deceased Susil Rout. The accident occurred on account of head on collision between the two vehicles. Due to the death of the deceased- husband of the first appellant, the charge-sheet submitted against him was deleted.

5. Four issues were framed by the Tribunal on the basis of the pleadings and the case went for trial on behalf of the appellants. The first appellant was examined as PW-1. In support of their claim, she produced and marked the documents namely, Exh.1 charge-sheet filed in GR 114 of 2004 before the S.D.J.M., Exh.2 three seizure lists, Exh.3 Zimanama, Exh. 4 inquest report, Exh.5 post mortem examination report and Exh.6 the copy of driving licence of the deceased. Apart from her, three other eye witnesses were examined, and they supported the claim of the appellants. None were examined on behalf of the Insurance Company to prove its case before the Tribunal. The Tribunal, on the basis of appreciation of pleadings and evidence on record, has answered the issue Nos. 1, 2 and 3 together and partly accepted the case of the appellants. The evidences of PW-2 and PW-4 are taken into consideration by the Tribunal and recorded the finding holding that the appellants did not produce FIR but on the other hand they have suppressed the same. The Tribunal placed reliance upon the charge-sheet-Exh. 1 and other documentary evidence referred to supra and held that due

to negligence of both the drivers of the vehicles, there was a head on collision of both the vehicles and the accident occurred. The appellants have placed strong reliance on the documents Exhs.1 to 5 produced by them in their evidence after adverting to the fact that neither the owner of the car nor the driver of the truck came forward to adduce evidence to prove the plea taken by the Insurance Company that there was contributory negligence on the basis of the documentary evidence on record and the so called admission of PW-4. The Tribunal has recorded the finding of fact on the contentious issue No. 1, and held that the accident occurred due to head on collision between the two vehicles and both the drivers are equally responsible for the occurrence of the accident. Therefore, the Tribunal recorded a finding of fact in this regard and held that appellants who are the legal heirs of the deceased are entitled to get compensation to the extent of 50% for the fault of the offending truck and held that the owner of the truck and the Insurance Company both are liable to pay 50% of the compensation to the appellants. Accordingly, issue Nos. 2 and 3 were also decided in favour of the appellants. The Tribunal quantified the compensation accepting the age of the deceased as 35 years on the basis of post mortem examination report - Exh.5 and applied multiplier of 16 to the multiplicand to quantify the loss of dependency by taking the monthly salary of the deceased at Rs.3,000/- in the absence of documentary evidence. Out of this amount, 1/3rd was deducted towards personal expenses of the deceased and the amount was quantified at Rs.3,84,000/-. Out of this amount again, 50% was deducted towards alleged contributory negligence of the deceased husband of the first appellant and the Tribunal awarded Rs.1,92,000/- towards the loss of dependency. To this amount, under the conventional heads, Rs.5000/- and Rs.3000/- was awarded towards funeral expenses and loss of estate, love and affection respectively and thereby in total, a compensation of Rs.2,00,000/- with interest at the rate of 6% per annum was awarded to the appellants. The appellants were aggrieved by the inadequate compensation awarded by the Tribunal in its judgment. The correctness of the same was questioned by them by filing an appeal before the High Court seeking enhancement of compensation. The High Court has passed a cryptic order without adverting to and appreciating the pleadings and evidence, and assigning any reason whatsoever to hold that the reasons assigned by the Tribunal on the contentious issue Nos. 1 and 2 do not suffer from impropriety and illegality. The correctness of the same is challenged in this appeal urging the following grounds.

6. It is contended by the learned counsel for the appellants that the High Court has not considered the evidence produced on record to show that the accident took place on account of rash and negligent driving of the driver of the truck, which is proved by examining the three eye- witnesses PW-2 to PW-4. The Tribunal, without considering the testimony of the eye witnesses has erroneously placed reliance upon Exh.1 the charge-sheet which was filed against both the drivers of the car as well as the offending truck. Further, it has held that there is 50% contributory negligence on the part of the deceased. PW-3 was not examined by the police during the course of investigation and PW-2 had stated in his evidence that the car was also driven in high speed. It is urged by the learned counsel for the appellants that the Tribunal, without there being any rebuttal evidence adduced by either the owner of the truck or his driver or any other independent witness to prove the alleged fact of contributory negligence on the part of the deceased, has erroneously recorded the finding of fact on the contentious issue No. 1 and held that there is contributory negligence on the part of the deceased. Therefore, it is urged by the learned counsel that the approach of the Tribunal in appreciating the evidence on record without there being any evidence on record adduced by the

Insurance Company about the negligence of the deceased is erroneous. The Tribunal has placed reliance on the charge-sheet filed against both the deceased and the driver of the offending vehicle and has held that there was contributory negligence of the deceased which resulted in head on collision between the two vehicles. This fact is not established by producing any evidence by the Insurance Company availing the defence of the insured. PW-1 who was traveling in the car has narrated how the accident occurred. The other eye witnesses who have witnessed the accident have also deposed in favour of the appellants. They have stated that on account of rash and negligent driving of the driver of the offending truck, the accident took place. In fact, PW-2 has stated in his evidence that he was going to his village on his bicycle and the accident took place within a distance of 15 feet away from him. Two other persons who have witnessed the accident were examined in the case in support of the claim of the appellants. It is urged in their evidence that they had helped the injured persons by shifting them to the Jajpur Hospital. PW-3, who is a betel shop owner, whose shop is situated near the place of accident, has stated in his evidence that there were six persons in the car and that he was not examined by the police. PW-4 deposed that he had seen the accident from a little distance from market where 10 to 20 persons were present at that time. He has stated in his evidence that the truck was in a high speed and there were six persons inside the car who sustained injuries. The driver of the car sustained grievous injuries and was conscious when he was taken to Jajpur Hospital on a trekker and later succumbed to injuries. The evidence of this eye witness has not been properly considered both by the Tribunal and the High Court, while recording the finding on the relevant contentious issue No.1. Therefore, the findings recorded on the issue No.1 by the Tribunal is erroneous in law, and the same concurred with by the High court without re-appreciating evidence on record, and therefore, is liable to be set aside. The compensation awarded by the Tribunal towards the loss of dependency was at Rs.3,84,000/- for the reason that the appellants did not produce documentary evidence to prove the monthly income of the deceased at Rs.5000/- as claimed by them. Therefore, the Tribunal has taken Rs.3000/- per month as salary of the deceased, even though he was entitled for more than Rs.6000/- per month as the job of a driver is a skilled job. The aforesaid relevant fact should have been taken into consideration by the Tribunal in the absence of documentary evidence placed on record to quantify the reasonable compensation. The Tribunal was required to consider the claim of the appellants by taking reasonable amount towards the monthly salary for which the deceased was entitled to in law and on that basis the Tribunal should have quantified and awarded just and reasonable compensation towards loss of dependency. That has not been done in the case in hand by the Tribunal. Therefore, it is urged by the learned counsel that the Tribunal has committed an error on fact by taking Rs.3000/- as monthly salary of the deceased for determination of multiplicand by ignoring the fact that the job of a driver is a skilled job. The Tribunal should have taken Rs.6000/- per month as the salary of the deceased and 1/3rd should have been deducted from his monthly salary towards his personal expenses.

7. Out of the total compensation of Rs.3,84,000/- under the head loss of dependency, 50% was deducted on the ground of equal contributory negligence on the part of the deceased and the Tribunal has erroneously awarded Rs.1,92,000/- towards the loss of dependency. It is further contended that the aforesaid legal contentions urged on behalf of the appellants are not examined by the High Court while exercising its appellate jurisdiction. It has passed a cryptic order without re-appreciating the facts, legal evidence on record and law on the question. Therefore, it is contended

that the impugned judgment is vitiated both on facts and law and hence, the same is liable to be set aside.

8. The learned counsel on behalf of the Insurance Company has sought to justify the impugned judgments of both the Tribunal as well as the High Court contending that the Tribunal being a fact finding authority, on proper appreciation of both oral and documentary evidence, particularly, the evidence of PW-3 and PW-4 who were eye witnesses, and have deposed that there was contributory negligence, has rightly affirmed so. The PW-2, who has stated in his evidence that the car was coming in a speed and there was a head on collision between the two vehicles, on the basis of documentary evidence Exh.1 the charge-sheet, the finding of fact recorded by the Tribunal, regarding contributory negligence on the part of the deceased is based on proper appreciation of facts and legal evidence. Therefore, the same cannot be termed as erroneous and does not call for interference by this Court. Further, it is urged that the quantum of compensation awarded by the Tribunal under the heading of loss of dependency at Rs.1,92,000/- in the absence of documentary evidence to prove the monthly income of the deceased, is legal.

9. On the basis of the rival factual and legal contentions urged by the learned counsel on behalf of the parties, the following points would arise for consideration of this Court:

1. Whether the finding of fact recorded by the Tribunal on the contentious issue No.1 holding that contributory negligence on the part of the deceased driver Susil Rout and award of compensation at Rs. 1,92,000/-, the same being affirmed by the High Court in its judgment, is erroneous in law and warrant interference in this appeal?
2. Whether the appellants are entitled to enhanced compensation?
3. What award?

Answer to point No.1:

10. This point is required to be answered in favour of the appellants for the following reasons:-

It is an undisputed fact that the accident took place on 08.11.2004 at about 11.45 p.m on account of head on collision between truck bearing registration No. OR09-C-7165 and the car driven by the deceased bearing registration No. OR 09-C-6463. The Jajpur Police Station has registered FIR against both the drivers of the offending vehicle and the car. After investigation of the case, charge-sheet Exh.1 GR 114 of 2004 was filed before the S.D.J.M Jajpur against the first respondent and the deceased, and on account of his death the case was abated and therefore, the Tribunal has committed error in law in coming to the conclusion in the absence of rebuttal evidence that there was contributory negligence of 50% on the part of the deceased.

11. The case of the appellants is that the accident took place on account of rash and negligent driving of the offending truck by its driver. The offending truck was coming from opposite direction to the

car. In the car, there were six persons traveling including the first appellant. The first appellant was examined as P.W.1 and other three eye witnesses were also examined as P.W.2 to P.W.4, who supported the version of P.W.1. They have narrated in their evidence that the accident occurred on 8.11.2004. P.W.2 has stated in his evidence that the accident took place within 15 feet away from the place, when he was going to his village in his bicycle. Two other eye witnesses were also examined as P.W.3 and P.W.4 who have also deposed before the Tribunal stating that Susil Rout got grievous injuries on account of the accident and was shifted to the Jajpur Hospital, where he was declared dead. They have also deposed that the occurrence of the accident was on account of rash and negligent driving of the truck. There was head on collision between the offending truck and the car.

12. P.W.3 was a betel shop owner, whose shop is situated near the spot of the accident. Though he was not examined by the Investigating Officer in the police case he is examined before the Tribunal whose evidence is required to be accepted for the reason that the same is not rebutted by the respondents. P.W.4 has stated in his cross examination that he saw the accident from a little distance from the market place, where about 10 to 20 persons were present. He has further deposed that the truck was in a high speed and the people traveling in the car sustained injuries and the driver of the car Susil Rout suffered grievous injuries and succumbed to the same. He was conscious when he was taken to the Jajpur Hospital on a trekker. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge- sheet-Exh.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170(b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet-Exh.1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of P.W.2 and P.W.3 in their cross-examination and placed reliance on them to record the finding on issue no.1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No.1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law. The Tribunal has accepted the part of oral evidence of the eye witnesses regarding the scene of accident and it has erroneously placed reliance upon the charge-sheet-Exh.1, which was filed against the driver of the offending truck and deceased to hold there was contributory negligence on his part by ignoring the fact that the criminal case against the deceased was abated. Therefore, we have to hold that the finding of fact recorded on issue No.1 by the Tribunal and affirmed by the High Court in the

impugned judgment, is erroneous for want of proper consideration of pleadings and legal evidence by both of them. Accordingly, we have answered point No.1 in favour of the appellants in so far as the finding recorded by the Tribunal on the question of contributory negligence of 50% on the part of the deceased is concerned.

Answer to point Nos. 2 and 3:

13. The appellants claimed compensation under the heading of loss of dependency as they were all dependents upon the earnings of the deceased Susil Rout. It is an undisputed fact that Susil Rout was working as a driver of the car which is a skilled job. Appellants have stated in the claim petition and in the evidence of PW-1 that the deceased was earning Rs.5,000/- per month. The oral evidence of PW-1 is not accepted by the Tribunal, solely for the reason that the appellants did not produce documentary evidence to prove the monthly salary of the deceased as Rs.5,000/- per month as claimed by them. However, it had taken monthly income of the deceased at Rs.3,000/-, for the purpose of determining the multiplicand. Out of Rs.3,000/- p.m., 1/3rd amount was deducted towards personal expenses of the deceased and arrived at Rs.3,84,000/- towards loss of dependency. Out of that compensation, 50% was deducted towards contributory negligence on the part of the deceased and Rs.1,92,000/- was awarded under the above heading. The compensation awarded by the Tribunal is approved by the High Court, which is not only erroneous in law but also suffers from error in law. The Tribunal ought to have taken the salary of the deceased driver at Rs.6,000/- by taking judicial notice of the fact that the post of a driver is a skilled job. Though the claim of the appellants is Rs.5000/- as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual entitlement of the salary of the deceased should have been taken at Rs.6000/- per month by the Tribunal for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the Appellate Court. In view of the law laid down by this Court in Santosh Devi vs. National Insurance Company Ltd. & Ors.[1]; 30% of future prospects of the deceased should be added to the monthly income. If 30% is added to the monthly income, it would amount to Rs.7,800/- p.m. From the same, 1/3rd should be deducted towards the personal expenses of the deceased, then the remaining amount would come to Rs.5,200/- per month. The same is multiplied by 12 amounting to Rs.62,400/- which would be the multiplicand. The same must be multiplied by 16 multiplier as the Tribunal has taken the age of the deceased at 35 as mentioned in the post mortem report, which is produced as Exh.5. According to the decision of this Court in Sarla Verma vs. Delhi Transport Corporation[2], the multiplier of 16 taken by the Tribunal for computation of loss of dependency is correct. If the 16 multiplier is applied to the multiplicand of Rs.62,400/-, it comes to Rs.9,98,400/- which amount is awarded towards the loss of dependency of the appellants. We have answered point No.1 in favour of the appellants holding that the finding recorded by the Tribunal that there was 50% contributory negligence of both the drivers of the offending truck and the deceased, is erroneous and further 50% deduction out of the total loss of dependency compensation determined by the Tribunal is not correct. Therefore, we have to hold that the appellants are entitled to the full amount of Rs.9,98,400/-. Further, the Tribunal has erroneously awarded a sum of Rs.5,000/- for funeral expenses without taking into consideration the actual amount required to be spent towards funeral expenses and obsequies ceremonies. The Tribunal has also inadequately awarded Rs.3,000/- towards loss of love and affection. The Tribunal also erred both on facts and in law as it has completely ignored the fact that the deceased died

leaving behind him the first appellant-the widow, his mother and two minor children, who have lost the love and affection of their father. Therefore, this Court, after taking into consideration all the expenses incurred for the funeral and sudhi ceremonies and towards loss of love and affection by the surviving child and the first appellant wife, by applying the decision in the case of Kerala State Road Transport Corporation vs. Susamma Thomas[3], awards Rs.50,000/- which is just and reasonable under the conventional heads. If Rs.50,000/- is added to the compensation awarded for the loss of dependency, the total compensation comes to Rs.10,48,400/-. The Insurance Company is liable to pay the same as the offending vehicle is insured with it and the same is an undisputed fact. The Insurance Company is also liable to pay interest at the rate of 9% per annum, from the date of application till the date of payment in view of the decision of this Court in Municipal Council of Delhi vs. Association of Victims of Uphaar Tragedy[4].

14. Accordingly, we allow the appeal in the following terms:

I) The impugned judgments and awards of the Tribunal and the High Court are set aside.

II) We award Rs.10,48,400/ with 9% interest per annum payable from the date of filing the application till the date of payment.

III)The compensation awarded shall be apportioned between the appellants - Minu Rout and Sumit Kumar Rout, equally as the remaining appellants Ratnamani Rout and Rohit Kumar Rout died during the pendency of the proceedings and their names have been deleted by the High Court of Orissa on 22.8.2011.

IV) We direct the Insurance Company to deposit 50% of the awarded amount with proportionate interest in any of the Nationalized Bank of the choice of the appellants for a period of 3 years. During the said period, if they want to withdraw a portion or entire deposited amount for their personal or any other expenses, including development of their asset, then they are at liberty to file application before the Tribunal for release of the deposited amount, which may be considered by it and pass appropriate order in this regard. The rest of 50% amount awarded with proportionate interest shall be paid to the appellants by way of a demand draft within six weeks from the date of receipt of a copy of this order after deducting the amount if already paid.

There will be no order as to costs.

... .. J . [G . S . S I N G H V I]
.....J. [V. GOPALA GOWDA] New Delhi, September 2, 2013

[1] 2012 (6) SCC 421

[2] (2009) 6 SCC 121

- [3] (1994) 2 SCC 176
- [4] (2011) 4 SCC 481

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