(2007) 06 OHC CK 0037

In the Orissa High Court

Case No : Misc. Appeal No. 555 of 2001 and MACA No. 74 of 2002

Branch Manager, United India Insurance Co. Ltd. APPELLANT

Vs

Pradeep Harizan and Another
 Pradeep Harijan Vs Radha Krishna Bisoyi and Another RESPONDENT

Date of Decision : 29-06-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 149, 149(4)

Citation : (2007) 2 OLR 426 Supp

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Advocate : M. Sinha, P. Sinha, A.K. Behera, in M.A. No. 555 of 2001, S. Mund, D.P. Das, S.K. Panda, S.K. Joshi and P.K. Roy, in MACA No. 74 of 2002, for the Appellant; S.K. Joshi, P.K. Ray, in MACA No.74 of 2002, A.R. Mohanty, G.N. Mishra, S.C. Sahoo, R.K. Jena, G.N. Mishra, S.C. Sahoo, R.K. Jena and M. Sinha, in M.A. No. 555 of 2001, for the Respondent

Judgement

I. Mahanty, J.—As both the above mentioned appeals arise out of a common Award passed by the M.A.C.T., Nabarangpur, they were heard together and are disposed of by this common judgment.

2. M.A. No. 555 of 2001 has been filed by the United India Insurance Co. Ltd. seeking to challenge the Award passed by the Addl. District Judge-cum-M.A.C.T., Nabarangpur in Misc. Judicial Case No. 71 of 2000 and MACA No. 74 of 2002 has been filed by the claimant seeking enhancement of the awarded amount.

3. The facts of the case in brief are that, on 27.1.1999 when the claimant was going to Binjuguda, the offending motor cycle bearing registration number OR-10-A-6770 coming from Nawarangpur side in a high speed rashly and negligently dashed against him and fled away, as a result of which the claimant sustained bodily injuries. Respondent Radhakrishna Bisoi (owner of the motorcycle) appeared before the Tribunal and in his written statement while refuting the contentions made in the claim application, stated that the accident took place

due to carelessness of the claimant himself being intoxicated. The Appellant Insurance Company also filed a written statement before the Tribunal denying its liability under the plea that the motor cycle in question was being driven by one Mangalram Majhi and not the owner of the vehicle i.e., Radhakrishna Bisoi at the time of accident and said Mangalram Majhi did not possess a valid driving licence.

4. The Tribunal framed three issues and answered the same by giving the findings in favour of the claimant, inter alia, holding that the claimant has proved successfully that the accident occurred due to the rash and negligent driving of the motorcycle and further came to a finding that the present Insurance Company had insured the offending motorcycle at the time of the accident and accordingly, awarded a sum of Rs. 65,500/- to the claimant along with a cost of Rs. 200/- and interest at the rate of 9% per annum from the date of application till realization.

5. Mr. M. Sinha, learned Counsel for Insurance Company strenuously contended that Exhibit-3, i.e., the certified copy of Charge Sheet would clearly indicate that one Mangalram Majhi was driving the vehicle rashly and negligently and was responsible for the accident and that the owner of the vehicle had subsequently developed a case by fabricating a plea that the offending vehicle was driven by one Narendra Bisoi who is stated to have possessed a valid driving licence. Sri Sinha submits that the Tribunal ought not to have ignored the evidence relied upon by the Insurance Company and ought to have given a specific finding regarding the identity of the person who was driving the offending motorcycle at the time of occurrence.

6. On the other hand learned Counsel for the claimant placed reliance upon a judgment of this Court in the case of Chenna Jyothirayi and Ors. v. IIIrd M.A.C.T., Bhubaneswar and Ors. 2000 (II) OLR 643, which was also relied upon by the Tribunal and submitted that in a claim case the primary liability is of the owner of the vehicle and when the vehicle is insured, the liability is to be discharged by the Insurance Company keeping in view with the provision contained in Sections 147 and 149 of the Motor Vehicles Act. In that judgment this Court observed that while Section 149(4) contemplates that even in a case where is there is no valid driving licence, the Insurance Company can be directed to pay the compensation to the claimant and thereafter claim reimbursement from the owner. In this respect the learned Counsel for the claimant submits that this Court on several decisions including the case of United India Insurance Co. Ltd. Vs. Kashinath Barik and Another, has also come to hold that the question as to whether there is a valid driving licence or not being essentially a question between the owner and the Insurance Company, it is not necessary for the claimant to prove the existence of valid driving licence in order to justify its claim. This Court also held that the claimant needs to only rely on the provision of Section 149(4) and seek compensation from the Insurance Company subject to of course, to the rider that the Insurance Company can claim reimbursement from the owner.

7. The Tribunal, in my opinion, has correctly placed reliance on the aforesaid

judgment of this Court and has come to hold that the contentions of the Insurance Company regarding the identity of the person who was driving the vehicle at the time of accident and as to whether such a person had possessed a valid driving licence or not, is a matter to be reached between the owner of the vehicle and the Insurance Company. In the present case since the identity of the vehicle is not in dispute and it is also not in dispute that the claimant had suffered an accident caused by the offending vehicle and further that the said vehicle was duly insured with the Appellant, learned Counsel for the claimant Appellant contended in its appeal that Rs. 65,500/- awarded by the Tribunal is quite inadequate in the circumstances of the case. But on consideration of the nature of the injuries sustained by the claimant, there is no infraction of the statutory principles in computing compensation and hence, I am of the view that the Award is justified and does not warrant any interference.

8. In view of the discussions made above, while I dismiss M.A.C.A. No. 74 of 2002, M.A. No. 555 of 2001 is also disposed of by directing the Insurance Company to comply with the directions given by the Motor Accident Claims Tribunal in the impugned Award within a period of one month from today and the registry is directed to remit the amount deposited with it along with the accrued interest to the concerned M.A.C.T. for its release in favour of the claimant. While the Award passed by the Tribunal is affirmed, the rate of interest passed by the Tribunal is reduced from 9 per cent to 6 per cent per annum from the date of application i.e. 7.5.1999, till realization. The other conditions stipulated in the Award are also affirmed. M.A. No. 555 of 2001 stands remitted back to the MACT, Nabarangpur to decide the issue raised between the Insurance Company. (Appellant) and the owner of the vehicle OR-10-A-6770 within a period of six months upon notice to both the parties.