(2000) 10 OHC CK 0002

In the Orissa High Court

Chenna Jyothirmayi and Others — APPELLANT

Vs

Third Motor Accident Claims Tribunal and Others — RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2002) 3 ACC 633

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Judgement

P.K. Misra, J.—Notice by affixture on refusal of opposite party No. 3 is treated as sufficient. In spite of notice, there is no appearance on behalf of opposite party Nos. 2 and 3. Heard Mr. S.C. Sahu for the petitioners and learned Addl. Government Advocate for opposite party No. 1.

2. This writ application is directed against the order dated 31,1.2000 passed by the Third Motor Accident Claims Tribunal, Bhubaneswar, calling upon the claimants to disclose the place of issue of the driving licence. In a claim case, the primary liability is of the owner of vehicle and when the vehicle is insured, the liability is to be discharged by the Insurance Company keeping in view the provisions contained in Sections 147 and 149 of the Motor Vehicles Act, 1988. Section 149 of the Motor Vehicles Act contemplates the circumstances under which the Insurance Company can claim exemption from liability. u/s 149(2) of the Motor Vehicles Act, lack of driving licence on the part of driver of the vehicle is considered to be a ground for exempting the Insurance Company from liability. However, Section 149(4) contemplates that even in a case where 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. This position has been clarified by this Court in several decisions including the decision in United India Insurance Co. Ltd. v. Kashinath Barik 2000 (1) OLR 497. In such view of the matter, 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 claimants to prove the existence of a valid driving licence. The claimants can always rely on the provisions of Section 149(4) and seek compensation from the Insurance Company subject, of course, to the rider that in such a case the Insurance Company can claim reimbursement from the owner. For the aforesaid reasons, the order directing the claimants to disclose the place of issue of driving licence was totally uncalled for and cannot be sustained. The impugned order is accordingly quashed. The Claims Tribunal shall now proceed to decide the matter in accordance with law as expeditiously as possible preferably within a period of four months from the date of communication of this order.

The writ application is accordingly allowed. Since there is no appearance for opposite party Nos. 2 and 3, there is no order as to costs.