
(2019) 01 OHC CK 0019
In the Orissa High Court
Case No : MACA No. 907 Of 2006

Dhiren Kumar Mishra And Another

APPELLANT

Vs

Kande Purty And Another

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 66, 149(2), 166

Citation : (2019) 1 TAC 945 : (2019) 196 AIC 334 : (2019) ACJ 2659

Hon'ble Judges : A.K. Rath, J

Bench : Single Bench

Advocate : S.K. Nayak

Final Decision : Dismissed

Judgement

A.K. Rath, J

1. Aggrieved by and dissatisfied with the award dated 29.07.2006 passed by the learned 3rd M.A.C.T, Rairangpur in MACT Misc. Case No. 5 of

2005, the owners of the vehicle have filed this appeal.

2. Claimant-respondent no. 1 filed an application under Sec.166 of the Motor Vehicles Act (in short, 'the Act') before the learned 3rd M.A.C.T.,

Rairangpur for the injuries sustained in a motor vehicle accident. Case of the claimant was that on 23.03.2000, he was travelling as a passenger in the

bus bearing registration number OR-II-5002 from Bahalda to Asana. Near Hendadunguri, the driver of the bus lost control, as a result of which, it was

upturned. Immediately he was shifted to Jharadihi P.H.C. Thereafter, he was shifted to Cuttack and admitted to Orissa Nursing Home from 24.3.2000

to 14.4.2000. He was treated there till 19.5.2000. His right foot above ankle joint was amputated and the left grt and 2nd toe (two fingers of left foot)

were disarticulated. There was also fracture of left femur. He became 75% disabled. He was a mason by profession and earning Rs. 125/- per day.

With this factual scenario, he filed the application.

3. Opposite parties 1 and 2-owners of the vehicle filed a written statement pleading, inter alia, that the claimant was not a passenger in the mini bus.

He was a pedestrian. While crossing the road in a reckless manner, the accident took place. On humanitarian ground, they shifted the injured to

Cuttack and admitted in the nursing home. They had borne the entire medical expenses. The driver of the vehicle had a valid driving licence. The bus

had a valid permit.

4. Opposite party.3-insurer of the vehicle entered contest and filed a written statement denying the liability. It was stated that neither the driver had a

valid driving licence at the time of accident, nor the bus had a route permit. Owner of the vehicle had violated the policy condition and as such, the

insurer is exonerated from its liability.

5. Stemming on the pleadings of the parties, learned Tribunal framed five issues. Parties led evidence, oral and documentary. Learned Tribunal came

to hold that the claimant was a passenger in the bus bearing registration number OR-II-5002. Due to rash and negligent driving of the driver of the

offending bus, the accident took place. The vehicle had no valid permit to ply on the route. Held so, it awarded a sum of Rs. 2,20,000/- with interest at

the rate of 6% per annum and directed the insurer to pay the same to the claimant and granted liberty to the insurer to recover the amount from the

owner of the vehicle.

6. Heard Mr. S.K. Nayak, learned counsel for the appellants. None appeared for the respondents.

7. Mr. Nayak, learned counsel for the appellants submitted that the finding of the learned Tribunal that the vehicle had no valid route permit is

perverse. The insurer is not exonerated from its liability to indemnify the owner of a vehicle in respect of injuries to third parties if the vehicle gets

involved in the accident after expiry of period of valid permit. Learned Tribunal committed a manifest illegality and directed the owners to furnish

security for the awarded amount. The award amount is excessive.

8. The seminal point that hinges for consideration is whether the owner of the vehicle is exonerated from its liability, when the offending vehicle did

not have a valid permit to ply on the road?

9. In *National Insurance Co. Ltd. v. Challa Bharathamma*, (2004) 8 SCC 517, the apex Court held that a person without permit to ply a vehicle

cannot be placed on a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an

infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of

adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. It was further held that considering

the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has

been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer

shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the

owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before

release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the

claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the

Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the

owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by

disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured.

10. An identical question came up for consideration before the apex Court in the case of *Amrit Paul Singh v. Tata AIG General Insurance*

Company Limited, (2018) 7 SCC 558. The apex Court held:

“In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a

permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had

temporary permit or any other kind of permit. The exceptions that have been

carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66.

The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh and Lakhmi Chand in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the â??Tripitakaâ?®, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle.â??

11. On an anatomy of pleadings and evidence on record, learned Tribunal came to hold that the vehicle had no valid permit to ply on the road. There is no perversity in the said findings. The ratio in the decisions cited supra applies with full force to the facts of this case.

12. The claimant had sustained injuries. His right foot above ankle joint was amputated and the left grt and 2nd toe (two fingers of left foot) were disarticulated. There was also fracture of left femur and he became 75% disabled. Considering the nature of injuries sustained in the motor vehicle accident and disability of 75%, it cannot be said that the award is exorbitant.

13. In the wake of aforesaid, the appeal, sans merit, deserves dismissal. Accordingly, the same is dismissed. There shall be no order as to costs.