(2004) 10 OHC CK 0007

In the Orissa High Court

Case No : MACA No. 512 of 2003

Divisional Manager and National Insurance Co. Ltd. APPELLANT

Vs

Punyaprava Acharya and Others RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Citation : (2004) 2 OLR 564

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : V. Narasingh, for the Appellant; A.K. Chowdhury, for the Respondent

Judgement

A.S. Naidu, J.—The Insurance Company has filed this appeal assailing the award passed on 29.4.2003 by the Second Motor Accident Claims Tribunal, Cuttack in Misc. Case No. 685 of 1993.

2. On 5.6.1993 at about 4 p.m. while proceeding in scooter on National Highway No. V, the husband/father of the claimant-Respondents Nos. 1 to 4 met with an accident and succumbed to the injuries sustained by him. He was thirty eight years'' old at the time of the accident and was working as a ''B'' Grade Clerk in the Orissa State Electricity Board. His monthly income was Rs. 3,410.00. Present Respondent No. 5 M/s. Mishra Zarada Traders was admittedly the owner of the Matador which caused the accident. The offending Matador was duly insured with the Appellant Insurance Company and the insurance policy was valid on the date of the accident. Before the Tribunal the Insurance Company contested the claim as opposite party No. 2, but then the owner of the Matador, opposite party No. 1, did not contest the case. The Tribunal after taking into consideration the age of the deceased, his monthly income and other factors, awarded a compensation of Rs. 4,00,000.00 (four lakhs) in favour of the claimants which was directed to be paid by opposite party No. 1, the owner of the offending Matador. An appeal was preferred against the said order before this Court and this Court remanded the matter to the Tribunal with direction to consider the question of enhancement of compensation and to fix inter se liability of the opposite parties giving liberty to

opposite party No. 1 to contest the case. After remand, opposite parties 1 and 2 further cross-examined P. Ws. 1 and 2. The owner of opposite party No. 1 also examined his Manager as a witness and exhibited the driving licence of the driver of the offending vehicle as Ext.K. The Tribunal on the basis of the evidence adduced once again confirmed the award of Rs. 4,00,000.00 as compensation and directed the Insurance Company.

3. The Insurance Company has challenged the said order mainly on two grounds.

The first ground being that the conclusion of the Tribunal with regard to validity of the driving licence was not correct. According to the Insurance Company the driving licence produced before the Tribunal was a fake one as would be evident from the verification report Ext.F produced by it, a Hindi translation of which was marked Ext.E. According to the Insurance Company the said report would reveal that the driving licence Ext.K was a fake one and the same was not issued by the licensing authority of Azamgarh. It was forcefully contended by Mr. Narsingh, learned Counsel for the Insurance Company, that in view of the verification report (Exts. F and E), the Tribunal acted illegally and with material irregularity in accepting the driving licence, Ext.D, and saddling the compensation on the Insurance Company.

The second ground raised is that the award of Rs. 4,00,000.00 (four lakhs) was not just and proper. It is also submitted that the Tribunal has not correctly calculated the annual income and has not taken other factors into consideration.

4. In course of hearing, learned Counsel for the parties agreed that an award of Rs. 3,85,000.00 (three lakhs eighty-five thousand) would be just, proper and equitable. In view of the aforesaid submission of the learned Counsel for the parties, and in a spirit of Lok Adalat, the compensation of Rs. 4,00,000.00 awarded by the Tribunal is reduced to Rs. 3,85,000.00 with interest thereon at the rate of 60% per annum from the date of filing of the claim application till the date of payment. Out of the said amount a sum of Rs. 3,40,000.00 (three lakhs forty thousand) shall be kept in unemcumberable Fixed Deposit in a Nationalised Bank jointly in the names of the claimants for a period of ten years and the balance amount shall be paid to the claimant-widow (Respondent No. 1) in cash.

5. So far as the contention of Mr. Narsingh with regard to validity of the driving licence is concerned, I find some force therein. In fact the Tribunal has not properly appreciated the evidence on record nor has answered the question with regard to the contention of the Insurance Company that the copy of the driving licence Ext.K was a fake one as would be evident from the verification report (Exts. F and E). The Tribunal brushed aside the contention of the Insurance Company on the ground that no steps were taken for calling for the original records from Azamgarh. Not possessing a valid driving licence is definitely has a bearing on the liability of the Insurance Company. The Tribunal ought to have taken a little more pain to decide the said question. But then not possessing a valid driving licence is a breach of policy conditions and for that poor claimants

who have lost their husband/father years back should not suffer. In consonance with the latest decision of the Apex Court in the case of National Insurance Col. Ltd. v. Swaran Singh and Ors, reported in AIR 2004 SCW 663 : (2004) 27 OCR (SC) 540 which has taken note of the earlier decisions of the said Court reported in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and United India Insurance Company Ltd. Vs. Lehru and Others, ends of justice and equity will be better served if the Insurance Company is directed to pay the entire compensation amount, and I direct accordingly. However I grant liberty to the Insurance Company to file a suitable petition before the Tribunal for realisation of the compensation amount paid by it from the owner of the offending Matador. The finding so far as validity of the driving licence is concerned is set aside and it is directed that if a petition is filed by the Insurance Company before the Tribunal, the latter will hear the matter, allow the owner of the offending vehicle and the Insurance Company to adduce further evidence if any. It is made clear that the claimants will have no role to play in such matter. After hearing if the Tribunal arrives at the conclusion that due to defective/fake/invalid driving licence the Insurance Company would not be liable to pay the compensation, it shall pass necessary orders for realisation of the said amount from the owner of the offending vehicle.

6. It is submitted that in consonance with the earlier direction, the owner has already deposited Rs. 50,000.00 (fifty thousand) towards the compensation amount. The balance amount of Rs. 3,35,000.00 (three lakhs thirty five thousand) is directed to be deposited by the Insurance Company with interest thereon as directed above within four weeks from today. After the amount is deposited, the same be disbursed to the claimants. So far as the amount of Rs. 50,000.00 paid by the owner of the offending vehicle is concerned, the same shall depend upon the final decision of the Tribunal with regard to validity of the driving licence.

The amount deposited in this Court by the Appellant-Insurance Company be returned to the Insurance Company with interest accrued thereon by a crossed cheque so as to enable it to deposit the entire amount as ordered within four weeks hence.