
(1998) 03 OHC CK 0024
In the Orissa High Court
Case No : M.A. No. 5 of 1996

Divisional Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Sayal Suna and Others

RESPONDENT

Date of Decision : 30-03-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 173

Citation : (1998) 2 ACC 713 : (1999) ACJ 1445 : (1998) 86 CLT 365

Hon'ble Judges : Ratnakar Dash, J

Bench : Single Bench

Advocate : P. Ray and D.P. Thatraj, for the Appellant; K. Jena and A.K. Mohapatra, for the Respondent

Judgement

Ratnakar Dash, J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (in short, "the Act") by the National Insurance Co. Ltd., Rourkela (hereinafter referred to as "the insurer") against the order dated 27.9.1995 of the learned Second Motor Accidents Claims Tribunal, Sarnbalpur (hereinafter referred to as "the Tribunal") whereby prayer of the respondent Nos. 1 and 2 for grant of interim award under no fault liability was allowed and the insurer was directed to pay the sum of Rs. 25,000 within two months from the date of passing of the impugned award.

2. The admitted factual position emerging from the record is that the deceased Suryakanta Suna, son of the respondent Nos. 1 and 2, died in a motor accident on 10.1.1993 at about 9 p.m. The respondents approached the Tribunal claiming compensation and they also filed a separate petition u/s 140 of the Act for interim compensation of Rs. 25,000 under no fault liability. The insurer filed objection to such claim, paras 6 and 7 whereof are extracted hereunder:

(6) That the O.P. No. 2 admits the accident alleged to have taken place on 10.8.1993 as stated in para 5 of the claim petition but denies the nature of injury sustained as stated in para 8 of the petition. The claimant is bound to prove not only the accident and the injuries as alleged but also the allegations that it was

caused by the driver of the alleged vehicle for his rash and negligent driving.

(7) That the O.P. No. 2 admits that the vehicle bus bearing No. ORO 3504 was covered under a policy or insurance at the material time. As per the investigation conducted by this party through an independent investigator, the accident took place while being used in contravention for the purpose permitted by registering authority and violating the route permit granted. The petitioner is to prove the same that the vehicle was not used for the purpose other than it should have been used legitimately.

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3. In course of hearing, respondent Nos. 1 and 2 filed certain documents, viz., copy of the F.I.R., charge-sheet and postmortem report. The learned Tribunal upon consideration of the pleadings of the parties and other relevant factors passed the impugned order, the correctness of which is assailed in the present appeal.

4. The learned Counsel for the insurer contended that there was no enquiry at all and the learned Tribunal in a hot haste passed the impugned order directing the insurer to pay interim compensation under no fault liability as envisaged u/s 140 of the Act. In course of argument, he placed reliance on two decisions of this Court in Divisional Manager, United India Insurance Co. Ltd. Vs. Moyana Mazumdar and Others, and The United India Insurance Co. Ltd. Vs. Kamalalochan Kamalo and Others, .

In Moyana Mazumdar (supra), the court observed that the only ingredients to be established by the claimants to attract the provision of Section 140 of the Act are that an accident had occurred by a vehicle and the death was resultant of the accident and so far as the insurer is concerned, it was observed that in order to fasten the liability on the insurer, the Tribunal is to find out as to whether the insurer is liable to indemnify the owner u/s 140 of the Act.

In Kamalalochan Kamalo (supra), the question for consideration was whether the insurer will be permitted to plead and establish in a summary manner in a proceeding u/s 140 of the Act that the risk was neither covered nor was required to be covered u/s 95. The court on consideration of the relevant provisions of the Act answered that before fastening the liability on the insurer some amount of inquiry is necessary.

In the present case, it is not disputed by the insurer that the risk was covered under the insurance policy. The only contention, however, was that the vehicle which had caused the accident was plying on the route having no route permit. In my opinion, it is not a question to be considered in a summary proceeding u/s 140 of the Act. The objections taken by the insurer, as quoted above, are vague and general in nature and no specific stand was taken that the insurer was not liable under no fault liability.

5. Keeping in view the object for which Section 140 has been enacted and

considering the submissions made at the Bar as also the pleadings of the parties, I am of the opinion that no fault can be found with the Tribunal in awarding compensation of Rs. 25,000 to respondent Nos. 1 and 2. However, so far as interest is concerned, in view of the decision of this Court in New India Assurance Co. Ltd. Vs. Radha Bewa and Others, , that part of the impugned order awarding interest is set aside.

6. With the above observation and modification the appeal is disposed of with cost of Rs. 250 to be paid to respondent Nos. 1 and 2.