

(2007) 06 OHC CK 0031
In the Orissa High Court
Case No : AHO No. 58 of 2002

Divisional Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Manorama Sahu and Others

RESPONDENT

Date of Decision : 26-06-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(2), 96

Citation : (2007) 2 OLR 403 Supp

Hon'ble Judges : A.K. Ganguly, C.J.; I. Mahanty, J

Bench : Division Bench

Advocate : P. Roy, for the Appellant; S.N. Kar, for Respondent Nos. 1 to 5 and Asst. Solicitor General for O.P. No. 3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, C.J.—This appeal against the High Court Order was filed in the month of June, 2002 from the judgment and order dated 8.5.2002 of the learned Single Judge of this Court in Misc. Appeal No. 401 of 1992.

2. From a perusal of the judgment of the learned Single Judge, it appears that on 13.5.1987 the husband of claimant No. 1 and father of claimant Nos. 2 to 5, who are daughters and son of the deceased, namely, Srinibas Sahu met a tragic death due to burn injury as the bus gutted with fire while it was in a running condition. It is also not disputed that Srinibas Sahu was a bank employee of Punjab National Bank of Cuttack Branch on the date of his death and at that time he was holding the post of Clerk-cum-Cashier. On these facts an award dated 14.5.1992 was granted by the III M.A.C.T., Balasore. The Tribunal has granted an award of Rs. 1,05,800/- out of which Rs. 1 lakh was to be paid by the present Appellant insurance company and Rs. 5,800/- was to be paid by the owner of the bus to the claimants.

3. The said judgment of the Tribunal was assailed by the insurance company before the learned Single Judge, inter alia, on the ground that contribution which

was given to it under Sections 95 and 96 of the Motor Vehicles Act, 1939 was not taken into account by the Claims Tribunal while granting the aforesaid award of compensation against it. The learned Single Judge found that in the case in question the insurance company did not produce the insurance policy.

4. The learned Counsel for the Appellant-insurance company has relied on a judgment rendered by another learned Single Judge on 28.3.1991 in connection with another motor accidents claims case in M.A. No. 314 of 1989 arising out of Misc. Case No. 54(C) of 1987 and the learned Counsel submitted that the present case is also covered by the said judgment.

5. We find that the learned Single Judge has distinguished the other judgment by holding that in the said case, namely, M.A. No. 314 of 1989 the learned Single Judge has held that before is Lordship by way of additional evidence the policy had been produced and in the interest of justice the learned Judge accepted the said additional evidence. The exact wording of the learned Single Judge in the said judgment is set out below:

...Before this Court by way of additional evidence, the policy has been produced. In the interest of justice, I have accepted the application for additional evidence, since the policy of insurance will decide the liability of the insurer vis-a-vis the owner. On a perusal of the said policy, I do not find that the insurer had taken any extra premium to cover any additional liability or any wider liability. In that view of the matter, the insurer would be liable to pay only the compensation amount provided in Section 95(2)(b)(ii) of the Motor Vehicles Act, namely to the tune of Rs. 15,000/- and the Tribunal was justified in so directing....

6. In the instant case, the fact is rather to the contrary. However, from the judgment of the Claims Tribunal we find that before the Claims Tribunal the insurance company did not produce the insurance policy. A Xerox copy of the insurance policy was produced by the owner of the bus and same was perused by the Claims Tribunal and it appears from the said insurance policy, which was filed by the owner of the bus, that for each passenger an additional amount of Rs. 12/- was taken. We have also looked into the record and we find from the Xerox copy of the insurance policy which was produced that there is clear endorsement that Rs. 12/- as additional amount was taken for 60 passengers amounting to Rs. 720/-.

7. The insurance company has not led any contrary evidence before the Tribunal nor has prayed for leading any additional evidence before the learned Single Judge. On the other hand, we find from the policy in question that a unit of one lakh is mentioned and the learned Claims Tribunal has fixed the liability of the insurance company to the tune of Rs. 1 lakh. Therefore, we do not find that there is any error in the judgment of the learned Single Judge when the learned Single Judge did not follow the other judgment of the learned Single Judge in M.A. No. 314 of 1989.

8. The learned Counsel for the Appellant-insurance company has relied on two

judgments in support of his contention that the liability of the insurance company is limited. The learned Counsel has placed reliance on a Division Bench decision of this Court in *New India Assurance Co. Ltd. Vs. Suresh Chandra Patra and Others*, . In that case the learned Judges came to a finding that if the owner wants to dispute the finding of the Tribunal which is based on materials on records, he should have filed the insurance policy himself which was in the custody of the owner. If the same is not done, in that case the owner may be found guilty of laches. In the instant case, same principle if applied goes against the insurance company in the sense that it seeks to escape from the judgment of the Claims Tribunal and that of the learned Single Judge without filing the insurance policy and also without questioning the evidence which has been led by the owner of the bus on the copy of the insurance policy. Therefore, the ratio of the said judgment does not help the Appellant.

9. In so far as the other judgment is concerned, namely, *New India Assurance Co. Ltd. Vs. C.M. Jaya and Others*, we find that in that case also the insurance policy was filed before the Court and in the said insurance policy the insurance company has taken its liability to the extent of Rs. 50,000/-. This appears from paragraph 12 at page 277 of the report. In the absence of any evidence being led by the insurance company before the Claims Tribunal or even before the learned Single Judge about the limit of its liability, this Court finds that the said view of the insurance company cannot be taken into account at the stage of Letters Patent Appeal.

10. We, therefore, do not find any error in the judgment of the learned Single Judge. The appeal is dismissed. The insurance company is directed to deposit the balance amount of compensation, apart from the statutory deposit which has been made in this Court, along with interest @ 6% to be calculated in terms of the direction of the Claims Tribunal. Such payment should be made by the insurance company within the period of six weeks from today, and after such amount is deposited, opportunity is given to the claimants to make an appropriate application before the Registrar (Judicial) of the Court for withdrawing the same by establishing their identity before the Registrar (Judicial).

There is no order at costs.

I. Mahanty, J.

11. I agree.