
(1993) 08 OHC CK 0047
In the Orissa High Court

Divisional Manager, New India Assurance Co. Ltd. APPELLANT
Vs
Manasi Jena and Another RESPONDENT

Date of Decision : 31-08-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D, 95(2)(b)(i)

Citation : (1994) 1 ACC 201

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

Bench : Single Bench

Judgement

P.C. Misra, J.—The Insurance Company has preferred this appeal u/s 110-D the Motor Vehicles Act, 1939 challenging its liability as per the award by the Second Motor Accident Claims Tribunal, Berhampur in M.A.C. No. 214/87 (35/87). The claim case arose out of an accident which occurred on 6.2.1986 at about 9.00 p.m. while the deceased was returning to his house, and a passenger bus, ORG 5396 dashed against him causing his instantaneous death. He was above 25 years of age on the date of his death and his widow preferred a claim for compensation of Rs. 80,000/- before the aforesaid Tribunal. The owner of the offending bus was impleaded as respondent No. 1 and the present appellant was impleaded as respondent No. 2 before the Tribunal. Though the owner filed a written statement, but he ultimately did not contest and was set ex parte. The Insurance Company contested the claim by filing a separate written statement denying all allegations made in the claim petition. It denied its liability to pay any compensation unless it is proved by the claimant that the offending vehicle was validly insured by respondent No. 2 company and the same was valid on the date of accident. The compensation claimed was also alleged to be excessive. The claimant examined three witnesses and proved certain documents in support of her claim. No witnesses were examined on behalf of the present appellant nor any document was proved on its behalf. The Tribunal after considering the evidence led before him came to a conclusion that Rs. 54,000/- is the due compensation, the liability to pay of which was on respondent No. 1, the owner and by virtue of the policy of insurance the liability passes on to respondent No.

2 namely, the Insurance Company. The Court in award made certain directions regarding mode of disbursement of amount of compensation. The Insurance Company-appellant has challenged its liability in this appeal.

2. Mr. Roy, learned Counsel appearing for the appellant submitted that it was the duty of the owner and also of the claimant to prove the Insurance policy in the absence of which no liability could be fixed as against the appellant-Insurance Company. This contention is not acceptable for the reason that in the written statement filed by the Insurance Company there was no specific denial that the offending vehicle was not covered by any policy issued by this Insurance Company, but it was merely said that the claimant should prove all material facts for fixing liability with the Insurance Company. A cover note issued by the Insurance Company was proved as Ext. 5 without objection before the Tribunal. It shows that the offending vehicle was insured with respondent No. 2 - Insurance Company with effect from 20.8.1985 and was valid up to 19.8.1986, which covers the date of accident. No effort appears to have been made by the Insurance Company to trace out the policy and for filing the same. Even though the owner of the vehicle was expected to be in possession of the original policy he did not file the same nor co-operated with the progress of the proceeding. It is, therefore, not available to be challenged by the appellant at this stage that there was no valid insurance covering the risk of the offending vehicle on the date of the accident.

3. It was next argued by the learned Counsel for the appellant that assuming that there was valid coverage of risk of the offending vehicle by the appellant-company, its liability is limited to Rs. 50,000/- as per the provisions contained in Section 95(2)(b)(i) of the Motor Vehicles Act. Admittedly the offending vehicle was a bus carrying passengers. The deceased was not a passenger, but was a third party, so far as the offending vehicle is concerned. Section 95(2)(b)(i) provides that subject to the proviso to Sub-section (1) a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely: (i) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all would be payable. Since the deceased was not a passenger the aforesaid limit will apply as a consequence of which the liability of the Insurance Company so far as the death of the deceased in the present case is concerned would be Rs. 50,000/-. There is no bar in law for covering extra risk by the Insurance Company on payment of extra premium which is not the case here. Irrespective of any agreement to the contrary, if at all, the statutory liability of the Insurance Company would be to pay Rs. 50,000/- in respect of the deceased in this case. The total compensation of Rs. 54,000/- having been awarded the balance of Rs. 4000/- shall be payable by respondent No. 2, the owner of the vehicle.

4. Mr. Roy next contended that the penalty clause, inserted in the order is

without any basis in law for which the same should be set aside. The Tribunal in its award has directed the Insurance Company (the present appellant) to pay a sum of Rs. 54,000/- to the claimant with 6% interest from the date of application i.e. 3.2.1987 till realisation with a consolidated cost of Rs. 200/-. It has been further directed that unless the respondent No. 2 pays the aforesaid amount within a period of three months from the date of the award, it shall be liable to pay penal interest at the rate of 12% per annum till realisation. Mr. Roy wanted to rely some decisions of this Court to substantiate his argument that award of penal interest is not permissible in law so far as the Accident Claims Tribunal is concerned. I am not interested to examine the legality of the principle for the reason that it is always the discretion of the Court to award interest in shape of damages and to fix the rate at which such damage shall be payable. I would, however, modify the award of interest by directing that damage shall be payable by the Insurance Company and by the owner in respect of their respective liabilities from the date of the award, i.e. 3.6.1988 till the date of realisation at the rate of 12% per annum.

5. The appeal is, therefore, disposed of with the aforesaid modification in the award. L.C.R. be sent back immediately.