
(2002) 11 OHC CK 0018

In the Orissa High Court

Case No : Miscellaneous Appeal No. 476 of 2000

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Subhagini Seth and Others

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(3), 145, 147

Citation : (2003) 2 ACC 315 : (2003) 95 CLT 230

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : P. Ray, for the Appellant; S. Udgata, for the Respondent

Judgement

Pradipta Ray, J.—On May 27, 1998 there was an accident between a Mini Truck bearing registration No. OR-15-5756 and a Dumper. One Ramesh Seth was critically injured in the accident and ultimately succumbed to his injuries in the hospital on May 29, 1998. His widow and two children filed application for compensation before the 2nd. Motor Accident Claims Tribunal, Sambalpur, claiming that deceased Ramesh was the helper of the Mini Truck. In the said claim case the claimant filed application u/s 140 of the Motor Vehicles Act (in short, "the Act") for interim compensation. By judgment and order dated April 15, 2000, the Tribunal granted interim compensation of Rs. 50,000/- to be equally shared by the Insurer of the Mini Truck and the Dumper. New India Assurance Company, the Insurer of the Dumper has filed this appeal against the aforesaid interim award dated April 15, 2000.

2. Mr. P. Ray, Learned Counsel for the Appellant - Insurance Company has strenuously urged that the Insurance Company is not liable to satisfy the interim award u/s 140 of the Act unless the Insurer is held liable to satisfy the award in the main claim case. He further submits that when the Insurer raises defences available to it. Tribunal should adjudicate upon those defences before directing the Insurance Company to satisfy the interim award.

In support of his submission Mr. Ray refers to the absence of any provision like Section 147 of the Act in Chapter-10. According to him in view of Section 144 of the Act, Chapter-10 has the overriding effect and the liability of the Insurer u/s 147 of the Act cannot be extended to the liability u/s 140 of the Act. "Overriding effect" does not mean that any other provision contained any other chapter cannot be invoked. "Overriding effect" implies, in case of any conflict with any other provision in any other chapter, provisions of Chapter-10 will have precedence over such conflicting provisions. Moreover, definition of "liability" in Section 145(c) of the Act demolishes the submission of Mr. Ray. Liability has been defined in Section 145(C) of the Act as :

"145, Definitions : In this Chapter :

(a) *** ** (b) *** ** (c) "Liability" wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof u/s 140;"

Thus, the liability of the Insurer u/s 147 of the Act includes the liability u/s 140 of the Act. Same view has been taken by this High Court in Divisional Manager, United India Insurance Co. Ltd. Vs. Mala Kar and Others,

3. Mr. Ray has placed reliance on a decision of the Supreme Court in National Insurance Co. Ltd. v. Jethuram and Ors. 1998 (2) TAC 805 in supporting his submission that the interim award is to be satisfied by the owner of the vehicle and the Insurer cannot be held liable at the interim stage. The aforementioned decision of the Supreme Court is being misconstrued. In Jethuram (supra) the Tribunal held that under the Insurance Policy Insurer was not liable to pay the ultimate compensation and that owner was liable to pay the final compensation, but in spite of such finding Tribunal directed the Insurer to pay the interim compensation u/s 92-A of the Motor Vehicles Act, 1939, on the view that liability u/s 92-A of the Act of 1939 is independent of the liability u/s 110-A of the said Act of 1939 and the Insurance Company is to pay the same notwithstanding that it is not liable to pay final compensation u/s 110-A. High Court of Himachal Pradesh affirmed the aforesaid view of the Tribunal. In the said factual context Supreme Court has held that if the Insurer is not liable to pay the final compensation, it cannot be made liable to pay the interim compensation.

4. Thus it is true that if the Insurer is found not liable to satisfy the main award, it cannot be held liable to satisfy the interim award but that does not mean that the Insurance Company cannot be directed to satisfy the interim award unless the main claim case is finally decided. Such view is opposed to the very purpose and object behind the enactment of Section 140 of the Act. In Oriental Insurance Co, Ltd. v. Hansrajbhai v. Kodala and Ors. 2001 (2) TAC 312 (SC) Supreme Court has observed ;

"Sub-section (2) further provides that if the claimant has filed an application for compensation u/s 140 and also in pursuance of any right on the principle of fault liability, the claim for compensation u/s 140 is to be disposed of in the first place

and as provided in Sub-section (3) the amount received under Sub-section (2) of Section 140 is to be adjusted while paying the compensation on the principle of fault liability."

4A. Once an application u/s 140 of the Act is filed and the materials on record prima facie establish the existence of basic facts like, insurance coverage, driving license, happening of the accident, death or permanent disablement arising out of the accident, the Tribunal is to give an interim award and unless it is patent from the records that the Insurance Company is not at all liable, the Insurer may be directed to satisfy the interim award subject to the final decision in the main claim case. If it is ultimately found that the Insurance Company is not liable, the Tribunal is required to direct the owner of the vehicle to reimburse the amount paid by the Insurer to satisfy the interim award. Full fledged conclusive determinations are not required to be made at the stage of passing an interim award.

5. In the impugned judgment the Tribunal has referred to the concept of "no fault liability" and has taken a view that the concept of "no fault liability" does not require the Tribunal to consider any plea available under Chapter-11 of the Act. Such view is not correct. If the materials on record ex facie show that the Insurance Company cannot be held liable, the Tribunal should not direct the Insurer to satisfy the interim award, Provisions of Sub-section (3) of Section 140 of the Act does not take away the defences of the Insurance Company vis-a-vis the owner of the offending vehicle. It is always open to the Insurance Company to show that the owner has committed breach of a material condition of the policy disentitling him to be indemnified by the Insurer. For example, if no driving license or particulars of driving licence are placed before the Tribunal at the time of interim claim, the Tribunal should not direct the Insurer to pay the interim compensation. But if a driving license or the particulars thereof are disclosed and an adjudication upon taking evidence is necessary as the Insurer disputes the genuineness or the validity thereof, the Tribunal need not embark upon resolving the said dispute finally at the interim stage and it can direct the Insurer to satisfy the interim award subject to the final decision in the main claim case. Reference may be made to an earlier decision of this Court in Divisional Manager, National Insurance Company v. Rajkishore Jethy and Ors. 1998 (1) TAC 398 (Ori.).

6. Provisions of Motor Vehicles Act, particularly Section 140 of the Act thereof are beneficial for the victims of the accident. While the Tribunal should be sensitive to the plight and immediate need of the genuine victims of the accident, it should also be careful that public money is not frittered away or unscrupulous persons do not take away the benefit at public expenses. In the present case, the deceased has claimed to be the helper of the Mini Truck. The present appellant is the Insurer of the Dumper which collided with the Mini Truck. The deceased was a third party in relation to the Dumper. The Supreme Court in New India Assurance Co., Simla v. Kamla AIR 2002 SC 1419 has said :

"22. To repeat, the effect of the above provisions is this; when a valid insurance

policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."

7. From the judgment it appears that the Dumper was covered under the Insurance Policy issued by the present Insurer. Thus, there is no error in the impugned order directing the Appellant-Insurance Company to pay its share of the interim award. It is, however, made clear that the payment of the interim award or its acceptance is subject to the final decision in the main claim case. If it is found that the Insurance Company is not liable to indemnify the owner of the Dumper, the Tribunal will pass necessary order directing the owner of the Dumper to reimburse the interim compensation paid by the Insurance Company.

8. The appeal is accordingly disposed of.