

(2002) 08 OHC CK 0018

In the Orissa High Court

Case No : Miscellaneous Appeal No. 716 of 1999

Divisional Manager, Orienta, Insurance Company Limited

APPELLANT

Vs

Damodar Pradhan and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 10B, 168, 173

Citation : (2002) 08 OHC CK 0018

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

Bench : Single Bench

Advocate : Puranjan Roy, for the Appellant; B.N. Samantaray, for Respondents Nos. 1 to 3 and M.B. Rao, for the Respondent

Judgement

A.S. Naidu, J.—This Miscellaneous Appeal has been filed u/s 173 of the Motor Vehicles Act by the Oriental Insurance Company Limited. The moot question that needs determination in this appeal is whether a dispute regarding genuineness of a driving licence can stand in the way of disbursement of the compensation amount awarded in favour of the claimants.

2. The Appellant Insurance Company has canvassed the said point and Mr. Roy appearing for the Appellant forcefully submitted that as the driving licence itself was fake, renewal of it at a subsequent stage cannot make a fake driving licence genuine and as such the Insurance Company would not be liable to pay the amount and it is the owner who has to pay the compensation.

But then, in the decision of the Supreme Court reported in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., it has been held that if the original driving licence produced was fake, the fact that it was renewed subsequently could not validate the same, and it would be open to the Insurance Company to claim indemnity against the owner of the vehicle by establishing that the vehicle was being driven by a person who did not have a valid driving licence. The Supreme Court has categorically held that the question is to be decided inter se between the insured and the insurer, the third party-claimants' entitlement is not

to be affected in any way and the Insurance Company would be liable to pay the compensation amount to the third party-claimants and get the same realised or reimbursed from the owner of the vehicle, if it is ultimately found that in fact the owner committed breach of the contract and the Insurance Company was not liable to pay the compensation. The relevant observation of the Supreme Court is quoted below:

The position can be summed up thus:

The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid licence. Learned Counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimants - third parties) from the insured person.

3 The second contention of Mr. Roy is that as the father of the deceased was fifty-five years" old and the mother was forty-five years" old on, the date of the accident, the proper multiplier for awarding compensation amount" should have been "13" and the learned Tribunal has erred in applying a multiplier of "16". According to Mr. Roy, the income of the deceased was found to be Rs. 1.000.00 per month and the dependency to be Rs. 666.00 per month. Thus yearly dependency comes to Rs. 7.992.00 and applying multiplier "13" the compensation would have been Rs. 1.03.896.00 and not Rs. 1.27.872.00 as awarded by the learned Tribunal. In view of the fact that the deceased was a bachelor, there is some force in the argument advanced by Mr. Roy.

4. In view of the conflicting Submissions, the moot question which needs to be answered is about application of the multiplier. In the decision reported in 1994 12 SCC 176 General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. while considering the law on the subject, the Hon"ble Supreme Court observed as follows:

The choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is higher) and by the calculation as to what capital sum if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest, in ascertaining this, regard should also be

had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last.

In Anr. decision reported in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, while reiterating the view " taken in the Susama Thomas case (supra), the Supreme Court held that there should be no departure from the multiplier method, particularly on the ground of awarding just compensation in consonance with the provisions of Section 10(B) of the Motor Vehicles Act. 1939 corresponding to Section 168 of the Act. Thus, the multiplier choice is an accepted method for determining the just compensation which also brings about the uniformity and certainty of the award. But then, the Supreme Court also observed that the Court should not always go by the ready reckoner and the same should only be used as a guide for choice of multiplier. The multiplier, as would be evident from the observations made by the Supreme Court in a number of decisions may differ in the peculiar facts and circumstances of a particular case. This view is fortified from the ratio of the decision in Jyoti Kaul and Others Vs. State of M.P. and Another, .

5. A cumulative assessment of the facts of the case as well as the circumstances reveals that the age of the father of the deceased was fifty-five years and the age of the mother was forty-five years on the date of death. Thus the proper multiplier according to me should be "13" and not "16". Accordingly, I am persuaded to agree with the submission of Mr. "Roy and hold that the claimants are entitled to a compensation of Rs. 1.03,896.00 and not Rs. 1,27,872.00.

6. The Miscellaneous Appeal is thus allowed in part. The compensation amount awarded by the Tribunal is reduced to Rs. 1.03,896.00 and it is directed that the said amount shall be deposited by the Insurance Company within two months hence. Needless to say, the claimants will be entitled to interest on the said compensation amount at the rate of 9% per annum from the date of their application, i.e. 8.7.1997 till realisation. If the Insurance Company fails to deposit the compensation amount within the time stipulated above, it will be liable to pay interest at the rate of 16% per annum.

In the light of the ratio of the decision of the Supreme Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , the case is remanded to the Motor Accident Claims Tribunal for the purpose of deciding about the validity of the driving licence. The said proceeding shall be confined between the Insurance Company and the owner of the vehicle and no notice need be issued to the claimants. If it is ultimately found by the Tribunal that the driving licence was fake and the Insurance Company was not liable to pay the compensation, it would be open to the Appellant Insurance Company to realise the said amount from the owner with interest. The entire exercise shall be completed within six months of communication of this order.

It is submitted that the Insurance Company has already deposited some amount in this Court. The said amount alongwith interest that has accrued be returned to

the Insurance Company in the shape of Account Payee cheque and the Insurance Company shall deposit the entire amount of compensation with interest within two months as indicated above. After the compensation amount is deposited, the same shall be disbursed in accordance with the principles laid down by the Supreme Court in Susama Thomas case and the observations made by the Tribunal in the impugned judgment.