

(1999) 06 OHC CK 0027
In the Orissa High Court
Case No : M.A. No. 160 of 1995

Divisional Manager, Oriental Insurance Co. Ltd.	APPELLANT
Vs	
Draupadi Behera and Others	RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 170

Citation : (1999) 2 ACC 666 : (2000) ACJ 1371 : (1999) 88 CLT 476

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

Bench : Single Bench

Advocate : M. Sinha, A.K. Mohanty, R.N. Mohanty and B.N. Rath, S.S. Basu, G.P. Dutta and S. Roy, for the Appellant; A. Mohanty, P.R. Dash, T. Rath, S. Natia, J. Sahu and B.P. Routray, for the Respondent

Judgement

P.K. Misra, J.—The insurance company has filed this appeal. Claimant-respondent Nos. 1 to 5 are the widow and four minor children of deceased Baidhar Behera. On 22.6.1991, while the deceased was standing on the road, truck bearing No. OSS 5343 dashed against the deceased causing death after some time. Application was filed claiming Rs. 1,50,000 as compensation.

2. The owner of the truck did not contest the case. The insurance company filed written statement denying the allegations made in the claim application. It was also stated that the driver of the truck did not have a valid driving licence and the vehicle had no permit and fitness certificate.

3. The Claims Tribunal on consideration of the materials on record held that the accident occurred due to rash and negligent driving of the driver of the truck. It was further found that the vehicle had been insured with the insurance company and as such the insurer was liable to pay the compensation of Rs. 84,000.

4. In this appeal, though the appellant challenged the legality of the findings regarding negligence and quantum ultimately did not seriously press the said questions keeping in view the decision of the Apex Court in Shankarayya and

Another Vs. United India Insurance Co. Ltd. and Another, to the effect that the insurance company has no right to contest the claim on questions relating to negligence and quantum unless an order is passed permitting the insurance company to contest the claim case in accordance with Section 170 of the Motor Vehicles Act 1988 (hereinafter referred to as "the Act").

5. The main question raised by the insurance company appellant relates to the question of liability of the insurance company. The learned counsel for the appellant contended that though plea was taken that there was no valid driving licence of the driver, no specific issue was framed by the Claims Tribunal relating to liability of the insurance company and regarding existence or non-existence of a valid driving licence, and as such the appellant has been prejudiced thereby. It is submitted that in case it is found that there is no valid driving licence, the insurance company may not be held liable.

The learned counsel appearing for the claimants-respondents submitted that the insurance company having not proved that there was no valid driving licence, cannot be permitted to agitate the said question in appeal. It is also submitted that even though there is no valid driving licence, keeping in view the provision contained in Section 149(4) of the Act, the amount is to be paid by the insurance company which in its turn can get reimbursement from the owner.

6. The accident took place in the year 1991. As such the Motor Vehicles Act of 1988 is applicable. Section 149(4) of the Act reads as follows:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

xxx xxx xxx

(4) Where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in Clause (b) of Sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

Section 149(2) envisages the defences which are available to an insurance company. (For the present, I am not concerned with the other defences on merit available u/s 170 of the Act). The relevant portion of Section 149(2) enables the insurance company to defend the action on the specific grounds indicated in sub-section (2)(a) and (b). u/s 149(2)(a), the insurance company can defend an action on the ground that there has been a breach of specific condition of the policy as envisaged in Sub-clauses (i) and (ii). Reading together Section 149(2) (a)(ii), it is evident that an insurance company can resist a claim on the ground

that there has been breach of the condition in the policy excluding the driving of the vehicle by any person who is not duly licensed. However, Section 149(4) appears to be an exception to Section 149(2). u/s 149(4), the restriction relating to conditions other than the condition indicated in Section 149(2)(b) is of no effect. Generally speaking, the grounds contemplated in Section 149(2)(a) relate to breach of condition of the policy as envisaged in Sub-clauses (i), (ii) and (iii) thereof, whereas the provision in Section 149(2)(b) relates to a policy which is void on the ground that it had been obtained by non-disclosure of material facts or by representation of fact which was false on some material particulars. Section 149(4) by its own terms has no applicability to a defence envisaged in Section 149(2)(b) and is only applicable to a defence covered u/s 149(2)(a). However, the proviso to Section 149(4) makes it clear that even though the insurance company is liable to pay the amount where there has been breach of specified condition in the policy in the circumstances indicated in sub-clauses of Section 149(2)(a), the insurer shall be reimbursed by the owner of the vehicle who is otherwise liable to pay the amount. This position becomes clear by a combined reading of Sub-sections (2) and (4) of Section 149.

7. The learned counsel for the insurance company, however, has submitted that the interpretation given above does not reflect the real intention of the legislature. Since this question is cropping up quite often and is likely to affect the insurance companies, many of the advocates who normally represent insurance companies in various cases were requested to address the court. Accordingly, many other learned counsel, such as Mr. M. Sinha and Mr. A.K. Mohanty who normally appear on behalf of insurance companies have addressed this court in addition to the counsel appearing for the insurance company in the present appeal. Similarly, many other learned counsel of the Bar who ordinarily appear either for claimants or owners in many such cases, such as Mr. R.N. Mohanty and Mr. B.N. Rath have addressed this court.

8. The learned counsel appearing for insurance companies have pointed out that Section 149 is practically a reproduction of Section 96 of the Motor Vehicles Act 1939 (in short, "the 1939 Act") with some changes here and there. They have submitted that a comparison of the provisions of Section 96 with Section 149 will make it clear that the real intention of the legislature was to re-enact the provisions contained in Section 96 with some minor changes. Particularly, they have invited my attention to provision contained in Section 96(2) which corresponds to Section 149(2) of the present. Act. Section 96(2) of the 1939 Act is quoted hereunder:

96, Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

xxx xxx xxx

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in

which the judgment is given the insurer had notice through the court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of Section 105; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached, where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular.

A comparison of Section 96(2) with the provisions in Section 149(2) makes it clear that the ground contemplated in Section 96(2)(a) is absent in Section 149(2). It appears that Section 96(2)(a) has been deleted and Section 96(2) (b), Section 96(2) (c), Section 96 (2-A) and Section 96(3) have been re-enacted as Sections 149(2)(a), 149(2)(b), 149(3) and 149(4) respectively. Section 96(3) which is important for the present purpose is extracted hereunder:

(3) Where a certificate of insurance has been issued under Sub-section (4) of Section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by

reference to any conditions other than those in Clause (b) of Sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(Emphasis added)

A reading of Section 96(3) and Section 96(2) makes it clear that benefit of Section 96 (3) was available where the ground of defence taken by the insurance company related to the circumstances envisaged in Section 96(2) (a) or (c) and such benefit was not available to the owner or the claimant where such defence related to Section 96 (2) (b). In other words, if it was proved that there had been a breach of specified condition of the policy as envisaged in Section 96(2) (b), the insurance company was exempted from making any payment. However, where the defence related to conditions indicated in Section 96(2)(a) and Section 96(2)(c), the insurance company was asked to pay the amount, but had the right to be reimbursed by the person actually liable, i.e., to say, the owner.

9. It is contended by the counsel for the appellant that though Section 9 (2)(a) has not been re-enacted u/s 149(2), the provision contained in Section 96(3) has been reproduced verbatim as Section 149(4) by inadvertence and since Section 96(2)(a) has been deleted, what was Section 96 (2) (b) has now become Section 149(2)(a). According to the counsel for the insurance companies this is an inadvertent printing mistake or inadvertent mistake of the draftsman, but the real intention is otherwise. It is thus submitted that the expression "...by reference to any conditions other than those in Clause (b) of Sub-section (2)..." occurring in Section 149(4) should be construed in the light of provisions contained in Clause (b) of Subsection (2) of Section 96 of the 1939 Act. In this connection, Mr. M. Sinha has referred to a number of decisions on the principle relating to interpretation of statutes.

10. Where the interpretation of a provision leads to absurdity or where there is an obvious printing mistake there is no doubt that courts can give effect to the real intention of the legislature. Where, however, the language employed is not ambiguous and giving plain meaning to the words used does not create any absurdity or ambiguity, it is not open to the courts to give a different meaning on the basis of the supposed intention of the legislature. Under the old provision if a policy was void, the insurance company, keeping in view the provision contained in Section 96 (3), was called upon to pay the amount payable and get reimbursement and where it was proved that there had been breach of condition of the policy, as enumerated in Section 96 (2) (b), the insurance company was being exonerated from making any payment and the owner was called upon to make the payment. On a plain interpretation of the present provisions, the position appears to have become the opposite. As per the present position,

where it is proved that there has been breach of the condition of the policy on the grounds indicated in Section 149(2)(a), the insurance company is called upon to pay the amount to the claimant and get reimbursement from the owner. Where, however, the policy is found to be void, the insurance company is exonerated and the owner is called upon to pay the compensation. This plain meaning given to Section 149 (2) and (4) does not create any ambiguity or absurdity, nor it can be said that it does not advance the intention of the legislature. It is quite well-known that it is difficult for a claimant to obtain payment from the owner of a vehicle. It is obvious that the intention of the legislature is to protect the claimant as far as possible. There cannot be any doubt that the occasions for invoking Section 149(2)(b) would be few and far between, whereas the defences envisaged in Section 149(2)(a) would be pressed into service more often. Therefore, it can be visualized that intention of the legislature was to protect the claimants in majority of the cases by providing that compensation amount shall be paid by the insurance company which in its turn can get reimbursement from the owner. The insurance company with an organisation under its control would be in a better position to get reimbursement from the owner by pursuing legal remedies available, whereas claimant obviously would not be in such a position. Such interpretation furthers the intention of the legislature rather than thwarting it.

11. Keeping in view the aforesaid principle, the matter has to be decided. In the present case, the insurance company had raised a plea that it was not liable and there was no valid driving licence. It is unfortunate that the Claims Tribunal has not framed any issue on the question of liability of the insurance company. (As a matter of fact, experiences show that in most of the cases, no issues are framed by the Claims Tribunals touching upon the liability of the insurance company). The submission of the counsel for the insurance company that the appellant was prejudiced by non-framing of an issue appears to be justified.

12. A petition has been filed in this court for admitting certain documents as additional evidence. However, since the owner has not appeared in this appeal and oral evidence may also be necessary, it would be appropriate to direct the Claims Tribunal to frame relevant issue on the question of liability of the insurance company.

13. As rightly submitted by the counsel for the claimants, such issue primarily effects the owner and the insurance company, though the claimant may be benefited if it is held that the insurance company is liable. The counsel for the claimants, therefore, submitted that even assuming that there is no valid driving licence, keeping in view the provision contained in Section 149(4) of the Act, the insurance company can be directed to pay the compensation to the claimants and if it is ultimately found that the insurance company is not liable, such insurance company can get reimbursement from the owner.

14. Keeping in view the principles of law discussed earlier and the facts and circumstances of the case, the appeal is disposed of subject to following

directions: The finding relating to the negligence of the driver and the quantum payable to the claimants are confirmed. The sum of Rs. 25,000 deposited in this court along with the accrued interest shall be disbursed to the claimants-respondents by the Registry by on account payee cheque/pay order. The balance sum of Rs. 59,000 along with the interest as directed by the Claims Tribunal shall be deposited by the insurance company before the Claims Tribunal by end of August, 1999. Interest should be calculated on sum of Rs. 25,000 from the date of claim application till September, 1995, and on Rs. 59,000 thereafter till the date of deposit before the Claims Tribunal. Such amount shall be disbursed by the Claims Tribunal to the claimants in accordance with the direction contained in the award. If the amount as directed is paid by end of August, 1999, the Claims Tribunal shall frame appropriate issue relating to liability of the insurance company and regarding the existence of driving licence and proceed to dispose of such issue in accordance with law after permitting the insurance company and the owner to adduce relevant evidence. If, however, the amount is not paid by end of August, 1999, the direction contained in the original award relating to liability of the insurance company shall be deemed to have been confirmed. Since the owner has not appeared in this court, appropriate notice shall be issued to the owner by the Claims Tribunal at the cost of the insurance company and all steps should be taken by the insurance company for issuance of such notice. The appellant is directed to appear before the Claims Tribunal on 3.8.1999 to receive further instruction. The documents filed as additional evidence be returned to the appellant for production and proof before the Claims Tribunal.

15. Before parting with the case, I must place on record my appreciation for the assistance ungrudgingly rendered by the learned counsel appearing for the parties as well as Mr. M. Sinha, Mr. A.K. Mohanty, Mr. R.N. Mohanty and Mr. B.N. Rath.

16. The appeal is disposed of accordingly. No costs.