
(2005) 03 OHC CK 0051
In the Orissa High Court
Case No : Misc. Appeal No. 618 of 1998

Divisional Manager, Oriental Insurance Co. Ltd.	APPELLANT
Vs	
Karna Chandra Sahu and Others	RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Citation : (2005) 03 OHC CK 0051

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : G.P. Dutta and S. Roy, for the Appellant; R. Mohanty and A. Jena for Respondent No. 1 and J. Mohapatra, R.N. Mohanty and R.N. Mohapatra for Respondents 2 to 7, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This appeal is directed against the judgment and award dated 1.7.1998 passed by the 2nd M.A.C.T. (S.D.), Berhampur in M.A.C. No. 15 of 1996 (366/95) directing payment of compensation of Rs. 1,33,500-with interest at the rate of 9% per annum from the date of application till realisation.

2. Claimant-Respondents are the legal heirs of deceased Magi Behera. Case of the claimants is that on 19.6.1995 at about 5 A.M. when the deceased Magi Behera was attending call of nature on the extreme left side of the road near village Palia Chatrapur the offending vehicle bearing registration No. OR-02A-4097 driven in a rash and negligent manner dashed against him causing severe injuries on his person. He was immediately shifted to Chatrapur Government Hospital and then to M.K.C.G. Medical College and Hospital, Berhampur where he succumbed to the injuries. The claim petition was filed by the claimant-Respondents for payment of compensation of Rs. 2 lakhs.

3. Owner of the offending vehicle though filed written statement and denied the allegations made in the claim petition, later on did not participate in the proceeding and was set ex parte. The Appellant-insurance company contested

the case by filing written statement wherein allegations made by the claimant-Respondents were denied. A specific stand was taken by the Appellant that the offending vehicle was not covered under a valid insurance policy and driver was not in possession of valid driving licence on the date of accident.

The Tribunal on the pleadings of the parties framed four issues and held that the offending vehicle was being driven in a rash and negligent manner resulting in the accident and due to such accident the deceased received injuries and succumbed to the said injuries. The Tribunal also found that the deceased was contributing Rs. 600/- per month to the family and applying 16 multiplier calculated compensation at Rs. 1,15,200/-. The Tribunal also allowed Rs. 15000/- towards loss of love and affection to the children, Rs. 1000/- towards expenses for carrying the dead body to village, Rs. 2000/- towards funeral expenses and in total granted compensation of Rs. 1,33,500/-. Tribunal also found that the offending vehicle was covered under a valid insurance policy on the date of accident and accordingly fixed liability on the Appellant-insurance company.

4. Shri G.P. Dutta, learned Counsel appearing for the Appellant challenged the judgment and award of the Tribunal solely on the ground that the offending vehicle was not covered under a valid insurance policy. It was submitted by Sri Dutta that the accident took place about 5 A.M. on 19.6.1995. The cover-note (Ext.A) shows that the policy was made on the very same day and coverage started from 10 A.M. According to Sri Dutta the accident having taken place prior to commencement of the policy the insurance company cannot be held liable for payment of compensation.

5. At the time of hearing of the appeal, none appeared for the claimants or the owner.

It appears from the Ext.A that the cover note was issued on 19.6.1995 and it has been specifically mentioned in the cover note that commencement of policy was from 10 A.M. Photostat copy of the insurance certificate which was exhibited as Ext.2 does not indicate any time of commencement of the policy. The Tribunal on consideration of both held that since the policy itself does not speak about the time of commencement of the policy it has to be held that the commencement of the policy was from midnight of previous day and accordingly the accident having taken place at about 5 0" clock morning the vehicle was covered by a valid insurance policy. Shri Dutta, learned Counsel appearing for the Appellant referring to the cover note as well as the insurance policy submitted that the cover note specifically mentioned the time from which the policy commenced and number of cover note is reflected in the policy itself. According to Sri Dutta even though the policy does not mention about time of commencement, since it reflects number of the cover note, the only conclusion that can be arrived at is that the policy commenced from 10 A.M. on 19.6.1995. In this connection, reference may be made to the decision of the Apex Court in the case of New India Assurance Co. Limited v. Sita Bai and Ors. reported in 2000 (I) TAC 3 (SC). In the aforesaid case proposal for insuring vehicle in question was made by the

owner of the vehicle on 16.4.1987 at 2100 hours. Cover not was issued by the insurance company on 16.4.87 at 2100 hours. Insurance policy was issued later on in which the date of commencement of the insurance policy was reflected as 16.4.1987(2100 hours). The Apex Court under such facts and circumstances of the case held that the accident having taken place at about 10 A.M. on 16.4.1987 the policy had not commenced and accordingly the insurance company is not liable to pay compensation. In the case of New India Assurance Co. Limited v. Bhagawati Devi and Ors. reported in 1999 (2) TAC 441 (SC) it has been held that if there is contract to the contrary the policy become operative from the previous midnight but if specific time is mentioned the policy would be effective from the mentioned time. In the present case, the cover note (Ext.A) was issued on 19.6.1995 indicating the commencement of the policy at 10 A.M. The policy was issued later on indicating the number of the cover note. True it is the policy does not indicate time of commencement but having taken note of the number of the cover note, I am of the view that there is considerable force in the argument of the learned Counsel for the Appellant that the policy must have been commenced from 10 A.M. on 19.6.1995. Had the number of the cover note not been noted, the policy in question would have been different. I am, therefore, in agreement with the argument of the learned Counsel for the Appellant that the accident having taken place at 5 A.M. and the police having commenced at 10 A.M. on 19.6.1995 the insurance company cannot be made liable for payment of compensation.

6. I, accordingly, allow the appeal and held that the amount of compensation granted by the Tribunal shall be paid by the owner-Respondent No. 1 and that the Appellant is not liable to pay the same.