
(1999) 07 OHC CK 0053
In the Orissa High Court
Case No : M.A. No. 6 of 1998

Divisional Manager, United India Insurance Co. Ltd. APPELLANT
Vs
Mala Kar and Others RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 144, 145, 149, 166

Citation : (2000) 1 ACC 585 : (2001) ACJ 15 : (2000) 89 CLT 322

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

Bench : Single Bench

Advocate : Ajay Kumar Mohanty and M.C. Nayak, for the Appellant; Shashikanta Misra, S.K. Misra, B. Baug, N.N. Mohapatra and B. Das, for the Respondent

Judgement

P.K. Misra, J.—The insurer has filed this appeal u/s 173 of the Motor Vehicles Act, 1988 (in short, "the Act"), against the direction of the Claims Tribunal u/s 140 of the Act for payment of Rs. 50,000 to claimant-respondent Nos. 1 to 5.

2. It is not disputed that the claimants-respondents have filed Misc. Case No. 299 of 1996 claiming compensation and the said application u/s 166 of the Act is pending. Along with the said application, the claimants also filed an application u/s 140 of the Act for payment of the amount as envisaged in Section 140. The insurance company filed objection stating that the parties must be called upon to produce the valid driving licence. The Claims Tribunal has directed payment of Rs. 50,000 on a prima facie finding that there was a driving licence on the date of the accident.

3. The learned counsel appearing for the appellant insurance company submitted that there is some dispute regarding the validity of the driving licence. He has placed reliance upon the decision of this court in Divisional Manager, National Insurance Co. Ltd. Vs. Raj Kishore Jethy and Others, and contended that since the validity of the driving licence is in dispute, the insurance company should not have been called upon to pay the amount u/s 140 of the Act.

4. Section 140 occurs in Chapter X of the Act. Though in Chapter X, it is nowhere indicated that the insurance company is to make the payment under no fault liability and in Section 144 it has been indicated that this Chapter shall have effect notwithstanding any other provisions contained in the Act or any other law, in view of the provisions contained in Section 145(c) defining "liability" to include "any liability u/s 140", there cannot be any doubt that the liability u/s 140 is also required to be discharged by the insurance company subject to other conditions being fulfilled. As a matter of fact, similar view has been expressed in the aforesaid decision of this court cited by the appellant.

5. The next question is as to whether in view of the dispute regarding the validity of the driving licence, the insurance company should be exempted from the liability for the time being. In this connection, Section 149(4) of the Act is also relevant. It has been now held that even where there is no valid driving licence and consequently, the insurance company is not liable to pay, direction can be issued to the insurance company to pay the amount as per provision contained in Section 149(4) with the right of recovering the said amount from the owner. [See Divisional Manager, Oriental Insurance Co. Ltd. Vs. Draupadi Behera and Others, The question of applicability of Section 149(4) had not been considered in the decision of this court in Divisional Manager, National Insurance Co. Ltd. Vs. Raj Kishore Jethy and Others, It is not disputed that the main proceeding u/s 166 of the Act is still pending. If it is ultimately found that the insurance company is not liable due to breach of condition of policy relating to absence of valid driving licence, even if any amount is paid by the insurance company, necessary direction can be issued by the Claims Tribunal for reimbursement of the same by the owner and such a direction can be executed under the normal procedure contemplated in the Act by instituting certificate proceeding against the owner wherever necessary. Thus, instead of deciding these matters at the stage of Section 140, it is desirable to direct the insurance company to pay the amount u/s 140 with the right of the insurance company to recover the said amount from the owner, in case it is ultimately decided that the insurance company is not liable. Of course, where there is no separate application filed u/s 166 and the only application is u/s 140, necessary enquiry has to be made by the Claims Tribunal relating to validity of the driving licence before a direction can be given regarding payment by the insurer.

6. It appears that insurance company has deposited a sum of Rs. 25,000 in this court which has been kept in fixed deposit. The said amount along with the accrued interest shall be kept in fixed deposit in the name of claimant-respondent No. 1 for a further period of one year by transmitting the name to the Claims Tribunal. The insurance company shall deposit a further amount of Rs. 25,000 before the Claims Tribunal on or before 31.8.99 and the said amount shall also be kept in fixed deposit in the name of claimant-respondent No.1 for a period of one year. The Claims Tribunal shall try to dispose of the main case u/s 166 of the Act as expeditiously as possible preferably within a period of six months from today. If it is ultimately found that insurance company is not liable,

the owner shall be directed to reimburse to the insurance company the amount paid to the claimants along with interest. Even if the proceeding u/s 166 is not disposed of on merit for any reason, the Claims Tribunal shall continue the enquiry relating to liability of the insurance company vis-a-vis that of the owner and shall pass appropriate direction regarding reimbursement by the owner in case it is found that the insurance company is not liable. Needless to point out that the matter has to be disposed of by the Claims Tribunal in accordance with law on the basis of evidence on record without being influenced by any observations made in this order relating to liability of the parties. The parties through their counsel are directed to appear before the Second Motor Accidents Claims Tribunal, Cuttack, on 16.8.1999. The L.C.R. is to be sent back immediately.

The misc. appeal is accordingly disposed of subject to the aforesaid directions. There will be no order as to costs.