
(2013) 08 OHC CK 0034
In the Orissa High Court
Case No : MACA No. 173 of 2012

D.M., N.I.A. CO. Ltd.

APPELLANT

Vs

Chaturbhuja Nayak

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : (2013) 08 OHC CK 0034

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—Heard learned counsel for the parties. This appeal by the appellant-Insurance Company, is directed against the judgment/award dated 04.11.2011, passed by the 1st Motor Accident Claims Tribunal, Dhenkanal, in MAC Case No. 201 of 2007, awarding an amount of Rs. 35,000/- (rupees Thirty-Five Thousand) as compensation along with interest @ 6% per annum, from 01.10.2007, till the date of payment.

2. The sole contention raised by the learned counsel for the appellant-Insurance Company is that as there are sufficient documentary evidence on record like F.I.R. (Ext. 1) and Final Form (Ext. 2) to show that the injured claimant was travelling as a gratuitous passenger in the offending tractor-trolley, learned Tribunal erred in ignoring the same and passing the impugned award. It is further submitted that as the Insurance Company produced the report of its investigator (Ext.A) and the affidavit of the informant (Ext.B) to show that the injured claimant was travelling as a gratuitous passenger along with others in the offending tractor-trolley, learned Tribunal has failed to take note of the same while passing the impugned award and fixing the liability on the appellant, as the insurer of the offending vehicle, to pay the compensation amount. In this regard, it is submitted that as the injured claimant was travelling as a gratuitous passenger in the offending tractor-trolley, which is in gross violation of the policy condition, no liability could have been saddled on the mp present appellant, as

the insurer of the offending vehicle.

3. On a perusal of the impugned award, it is seen that the learned Tribunal has taken into consideration the evidence of the claimant (P.W. 1) as well as the evidence of the eye witness (P.W. 2) and in absence of any cogent evidence to the contrary, learned Tribunal has come to hold that the driver of the offending vehicle was rash and negligent in causing the accident and the plea of the Insurance Company that the injured claimant was travelling as a gratuitous passenger in the offending vehicle cannot be accepted. Relevant finding of the learned Tribunal is extracted below:-

.... In view of the aforesaid finding, this Tribunal comes to a conclusion that the insurance company/O.P. No. 2 is liable to pay the compensation to the petitioner. Although it was argued on behalf of O.P. No. 2 that since the petitioner was a gratuitous passenger in the offending vehicle, he is not entitled to get any compensation. But, in view of the evidence of the eye witness to the accident, i.e. P.W. 2 and in absence of any evidence on behalf of the O.P. No. 2 in support of its plea except the bald evidence of its investigator OPW. No. 1, who is not an eye witness to the accident and his report under Ext.A. and in absence of any other cogent, reliable and supportive evidence, adduced on its behalf, it cannot be said that the petitioner was a gratuitous passenger in the offending tractor at the time of accident. Thus, taking into consideration the above evidence, this Tribunal comes to a conclusion that the O.P. No. 1 is liable to pay the aforesaid compensation to the petitioner, which would be indemnified by the O.P. No. 2 on account of valid and effective insurance policy of the offending vehicle and D.L. of its driver at the relevant time. Accordingly, the petitioner is entitled to get Rs. 35,000/- as compensation from the O.P. No. 2 along with interest @6% per annum from the date of filing of the claim application i.e. 01.10.2007...

4. Considering the submissions made by the learned counsel for the parties and keeping in view the findings of the learned Tribunal given in the impugned award and the reasons assigned in support of the same, no impropriety or illegality can be said to have been committed by the learned Tribunal so as to warrant any interference in this appeal. The appeal being devoid of merit, the same is accordingly dismissed.

5. The appellant-Insurance Company is directed to deposit the awarded compensation amount along with the interest with the learned Tribunal within six weeks hence.

6. The statutory amount deposited in the Registry of this Court along with the accrued interest thereon shall be refunded to the appellant-Insurance Company, on production of receipt showing deposit of the awarded compensation amount and interest with the Tribunal. MACA is accordingly dismissed.