
(2011) 09 OHC CK 0003
In the Orissa High Court
Case No : M.A.C.A. No. 954 of 2009

Krushna Rakasa and Another

APPELLANT

Vs

Sarat Chandra Panigrahi and Another

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2011) 2 OLR 998 : (2012) 1 TAC 763

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

Bench : Single Bench

Judgement

S.C. Parija, J.—This appeal by the claimants-appellants, is directed against the judgment/award dated 20.8.2009, passed by the 4th Motor Accident Claims Tribunal, Jharsuguda, in MAC No.26 of 2009, awarding an amount of Rs.3,85,000/- as compensation, along with interest @ 6% per annum from the date of filing of the claim application, i.e., 13.3.2009 and directing the owner of the vehicle (respondent no.1) to pay the same.

2. Learned counsel for the claimants-appellants submits that as the offending vehicle, i.e., tractor fitted with trolley is a goods carriage and has been insured as such, learned Tribunal erred in fixing the liability on the owner of the vehicle. It is submitted that as the insurance policy issued in respect of the tractor-trolley covers the risk of the driver and helper/labourer, working in the tractor and the deceased was admittedly working as a helper/labourer in the said tractor-trolley, the insurance policy did not cover the risk of the deceased-helper and the insurer is liable to pay the compensation amount awarded.

3. Learned counsel for the claimants has relied upon a decision of the apex Court in the case of Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, , in support of his contention that Section 147(1)(b) first proviso of the M.V. Act, 1988, provides insurance coverage to the workman or labourer carried in goods carriage vehicle. In this regard, learned counsel has also relied upon a decision of this Court in The Divisional Manager, Oriental Insurance Co. Ltd. Vs. Minka

Munda and Others,

4. Learned counsel appearing for the Insurance Company-respondent no.2 while supporting the impugned award submits that as the deceased was travelling as a gratuitous passenger in the offending tractor-trolley, the insurance policy issued in respect of the said vehicle does not cover the liability of such a person. In this regard, it is submitted that as the seating capacity of the tractor is only one, i.e. driver, any other person carried in the tractor, even as a labourer, is not covered under the policy unless extra premium is paid for covering the risk of such a labourer. It is further submitted that the assessment of the compensation amount is not proper and justified.

5. On a perusal of the impugned award, it is seen that the owner of the offending tractor-trolley appeared before the Tribunal and filed written statement admitting the employment of the deceased Arjun Rakasa as a labourer in the said tractor-trolley and that he died in an accident on 5.6.2008, by falling down from the tractor-trolley, while he was travelling in the same. The owner further stated in his written statement that as the tractor-trolley was covered under a valid policy of insurance, the insurer is liable to pay the compensation amount.

6. Learned Tribunal, on the basis of the evidence on record, while coming to find that the deceased was working as a labourer and died while travelling in the tractor-trolley has proceeded to observe that there is no evidence to show that the deceased was being carried as a representative of the owner of the goods and therefore, even if it is accepted that the deceased was being carried in the vehicle and died in an accident, he shall be treated as a gratuitous passenger and is not covered under the policy of insurance. Accordingly, learned Tribunal has proceeded to hold that the owner of the vehicle is liable to pay the entire compensation amount.

7. Admittedly, the offending vehicle, i.e., tractor fitted with a trailer/ trolley is a goods carriage, which is covered under a valid policy of insurance, no extra premium is required to be paid to cover the liability of a labourer carried in such a goods vehicle, in view of the provisions contained in Section 147(1) of the M.V. Act, 1988. In the instant case, as the evidence on record, including the admission of the owner of the tractor-trolley clearly goes to show that the deceased was working as a labourer in the said vehicle, the policy issued in respect of the said tractor-trolley covers the risk of the deceased labourer.

8. In view of the above, the impugned finding of the learned Tribunal holding the owner of the vehicle-respondent no. 1 liable to pay the compensation amount is not proper and justified and the same is accordingly set aside. Instead, the insurer is held liable to pay the same. As regards the quantum of compensation amount awarded and the basis on which the same has been arrived at, I feel, the interest of justice would be best served, if the awarded compensation amount of Rs.3,85,000/- is modified and reduced to Rs.3,25,000/-, which is payable by the insurer. The impugned award is modified to the said extent.

9. The Insurance Company-respondent no.2 is directed to deposit the modified compensation amount of Rs.3,25,000/- along with interest @ 6% per annum calculated from the date of filing of the claim application with the learned Tribunal within six weeks hence. On deposit of the amount, the same shall be disbursed to the claimants proportionately, as per the direction of the learned Tribunal given in the impugned award.

10. MACA is accordingly disposed of.