(1988) 04 OHC CK 0006

In the Orissa High Court

National Insurance Co. Ltd. APPELLANT

Vs

Chamaru Bhoi and Others RESPONDENT

Date of Decision : 05-04-1988

Acts Referred:
Motor Vehicles Act, 1939 — Section 110D, 94

Citation : (1988) 2 ACC 161

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

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—Insurer is the appellant in this appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as ''the Act''). Claimants have filed a cross-objection for enhancement of the amount of compensation awarded.

2. On 15-7-1981 at about mid-day in an accident caused by a truck Satyakadi, a boy aged about 16 years, who was earning his livelihood from tailoring sustained fatal injuries to succumb at the spot at the outskirts of his village Bhetra while returning home from the tailoring shop at Golobazar in Sambalpur town.

3. Claiming the monthly earning of the deceased to be Rs. 350/- the parents of the deceased in their fifties claimed compensation of Rs. 50,000/- against the owner of the truck bearing registration number OSC 9648. Originally, it was stated that the name of the insurer was not known. By amendment dated 7-12-1982, New India Assurance Company was claimed to be the insurer. On 15-2-1984 in place of New India Assurance Company, National Insurance Company was asserted to be the insurer.

4. Owner did not appear to contest. Appellant denied the assertions as well as the basis for compensation. It asserted that with the little particulars in the position it is unable to admit if interest of the owner named in the claim petition was insured unless better particulars on insurance are disclosed by the claimants. It stated that the claimants may cause the owner of the vehicle to be directed by the Tribunal to pro duce and prove the policy of insurance.

5. In the background of above assertions and counter assertions issues were settled and parties entered into context. On 1-8-1984 claimants examined four witnesses and produced one document. No witness was examined on behalf of the insurer and no document was also filed. Amongst four issues settled, issue No. 4 is:

Are the claimants entitled to compensation? If so, to what extent and from whom?

6. The tribunal held the death to be result of the accident by the truck OSC 9648. It also found the driver of the truck to be negligent in driving the vehicle and the vehicle dashed against the deceased who was crossing the road which was straight in that patch. Tribunal, however, found that the deceased could have taken care since the truck could also be visible to him from a distance and thus, there was contributory negligence: Determining the monthly income of the deceased to be Rs. 100/-, the annual dependency was taken at Rs. 1,800/-. It applied the multiplier of 20 and taking into consideration the contributory negligence, determined the compensation at Rs. 18,000/-. It made the owner and the insurer jointly and severally liable without discussing if the appellant is the insurer of the vehicle.

7. Mr. R. Samantray, the learned Counsel for the appellant, submitted that in the absence of any finding that the appellant is the insurer, it could not have been made jointly and severally liable with the owner, teamed counsel challenged the correctness of Ext. 1 which has been des cribed on the certified copy of the Register of Motor Vehicles in the district of Cuttack. Mr. Samantray submitted that the claimants not having taken steps to adduce best evidence available and having failed to give evidence explaining why the insurance policy with regard to the vehicle can not be brought to record, fixing liability of the appellant is unjust and unreasonable Mr. M.S. Misra, the learned Counsel for the claimants, submitted that determination of annual income of the deceased at Rs. 1,800/- in unjust and the application of the multiple of twenty in unjustified. He further submitted that in the absence of any finding that the negligence contributed by the deceased in equal the determination of just compensation at Rs. 18,000/- is unjust.

8. The first question for consideration is whether the appellant is the insurer. Tribunal ought to have specifically, dealt with this question. The truck was used in a public place. u/s 94 of the Act the use of the vehicle without valid insurance is prohibited. Insurer issues a certificate in respect of the contract of insurance apart from the policy and such certificate is deemed to be a policy until the policy is issued as provided u/s 103. For the purpose of getting authority to use a vehicle in public place, the certificate of insurance is to be produced before the authorities as required u/s 107. A register is maintained in respect of Motor Vehicles in each district. In compliance with Section 107 to avoid the prohibition in Section 94, when the certificate of insurance is produced, the same is entered in the remarks. u/s 109 of the Act information when required is furnished to a

person entitled to claim'' compensation. The insurer is also entitled to the information u/s 109. Such information was obtained by the claimant on 9-2-1984 and on 15-2-1984, the same was produced before the Tribunal with an application for amendment of the claim petition to make the appellant a party. Amendment was allowed and notice was directed to be issued to the appellant or required u/s 96(2) of the Act fixing 8-5-1984 for appearance" and for filing written statement. Appellant appeared and filed the written statement that day. Thereafter, the appellant was appearing day to day. After service of notice on the opposite party No. 1 when he did not appear, he was set ex parte by order dated 7-7-1984 and evidence was1 recorded on 1-8-1984. Thus, the appellant had opportunity to inspect the record and the document containing the information furnished by the registering officer u/s 1.09 of the Act. In spite of it no step was taken by the appellant to challenge the information furnished therein.

9. Mr. Samantray submitted that the claimants ought to have produced the best evidence, i.e. the policy of insurance by summoning the owner to produce the same. When the statutory information as supplied to the claimants were produced as per Ext. 1, the insurer ought to have summoned the owner to produce the policy and not the claimants. The appellant could have produced its records of insurance during the relevant period to prove that the person using the vehicle was not insured with it. The Regional Transport Officer who Supplied the information could have been examined to prove that the entry is not correct. No such stop was taken before evidence was recorded. Even on the date of bearing, appellant did not apply for adjournment to explain or contradict the information in Ext. 1 that it is the insurer of the vehicle.

10. In this Court when Mr. Samantray assailed Ext. 1, I gave him opportunity to deposit the costs for production of the original. In the original register also it has been stated:

28. Remarks, suspension etc.- (1) to (3) x x x (4) Rs. 1123?1-4-81 to 30-6-81 CTC No. 36262 dated 30-3-81 I/C 5-6-82 (N.I.Co.) (5) Rs. 1123?1-7-81 to 30-9-81 CTC No. 271962 dated 26-6-81 I/C 5-5-82 (6) x x x

There is no mention that N.I. Co. is National Insurance Co. But a statement at the bar is made that whenever the short form for New India Assurance Co. is used it is stated to be N.I.A. Co. The information sup plied in Ext. 1 is, thus, not accurate. Contention of Mr. Samantray that the appellant is not the insurers requires further proof after giving chance to New India Assurance Co.

11. Casual entry in the statutory registers by authorities under the Act from which information was supplied which is not accurate and lack of seriousness in contest by the appellant have resulted in the delay in finality of this proceeding. I have no doubt that State Government in appropriate department shall send immediate instruction as per law so that the insurer''s name is clearly mentioned to be identifiable when occasion so arises. Since the claimants would suffer a prolonged litigation for determination of the real insurer of the vehicle on account

of the appellant not taking adequate date, they are entitled to a cost of Rs. 2,500/- from the appellant to mitigate the suffering on account of prolonged enquiry.

12. Since I am remitting the matter back for further enquiry, I allow the cross-objection also for determination of the just compensation without expressing any view. I, however, make it clear that the compensation in no case shall be less than Rs. 18,000/-.

13. In conclusion:

(a) New India Assurance Company, Cuttack shall be added as party and notice shall be sent to it;

(b) The true copy of the register of motor vehicles filed in this Court shall be marked as exhibit and considered;

(c) National Insurance Company shall be given opportunity to prove that New India Assurance Company is the insurer and not National Insurance Company. Failing to prove the same, National Insurance Company (appellant) shall be held to be the insurer;

(d) Claimants shall get opportunity to adduce further evidence in support of higher compensation;

(e) Both parties shall appear before the Tribunal on 2-5-1988 on which day cost of Rs. 2,500/- shall be deposited by the appellant before the Tribunal to be paid to either of the claimants personally on being duly identified and the Tribunal shall record its satisfaction to the identity of the claimant receiving the amount;

(f) On 2-5-1988, requisites shall be filed by the appellant before the Tribunal with copy of the claim petition for issue of notice to the New India Assurance Company, Cattack;

(g) After service of notice on the New India Assurance Company, the hearing shall be completed in accordance with law without being influenced by the finding of the Tribunal in the award which is set aside with regard to the contributory negligence of the deceased on his income, and

(h) On failure of the appellant to deposit the costs and requisites for notice on 2-5-1986 as directed, appellant shall be deemed to be the insurer liable to pay the compensation.

14. In the result, the appeal and the cross-objection are allowed and the award is set aside subject to the conditions aforestated. No costs.