
(2006) 04 OHC CK 0029
In the Orissa High Court
Case No : Misc. Appeal No. 516 of 1998

National Insurance Co. Ltd.	Vs	APPELLANT
Panibudi Chulia and Others		RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(1), 141, 142, 143
Workmens Compensation Act, 1923 — Section 30

Citation : (2006) 4 ACC 743 : (2007) ACJ 164 : (2006) 110 FLR 119 : (2006) 4 JCR 491 : (2006) 1 OLR 715 : (2006) 3 RCR(Civil) 670

Hon'ble Judges : L. Mohapatra, J;B.P. Das, J;A.K. Samantaray, J

Bench : Full Bench

Advocate : N.K. Mishra, S. Mishra, S.K. Mishra and M. Rath, for the Appellant;
P.K. Nayak, R.P. Mishra, S.K. Mohapatra and Sidhartha Mishra, for the Respondent

Judgement

L. Mohapatra, J.—This appeal arises out of an Award passed by the Commissioner for Workmen's Compensation. The Full Bench is called upon to answer the reference made by the Hon'ble Single Judge on the following issue:

Whether in absence of a provision alike Section 149 of the M.V. Act, 1988 the Commissioner for Workmen's Compensation can be directed to determine the issue between the insurer and the insured regarding allegation of violation of policy conditions and to proceed for recovery of the amount so paid to the third party from the insured.

2. Before answering the reference it is necessary to refer to the facts and law involved in the case. Claimants are the legal heirs of deceased Sananda Chulia. Said Sananda Chulia was working as a driver under one Bhimsen Behera in his trekker bearing registration No. OR-15-B-0914. On 12.1.1997 while the deceased was driving the aforesaid vehicle, met with an accident near Atabira, as a result of which he sustained bodily injuries and ultimately succumbed to the injuries. Owner of the offending vehicle having refused to pay compensation, the claimants approached the Commissioner for Workmen's Compensation, Sambalpur Division

in W.C. Case No. 4 of 1997. Before the Commissioner for Workmen's Compensation the owner of the vehicle filed written statement admitting employment of the deceased under him as a driver in the aforesaid vehicle, the accident and the resultant injuries as well as death arising out of the accident. The appellant before this Court filed a separate written statement admitting the fact that the vehicle had been insured with it. However, the appellant resisted the claim on the ground that the deceased did not have a valid driving licence on the date of accident and therefore the insurance company cannot be saddled with the liability. The Commissioner, Workmen's Compensation, however, on examination of the evidence available on record held that the deceased had a valid driving licence and accordingly saddled the liability on the appellant.

3. In appeal before this Court the very same ground was taken by the appellant. Since the existence of a valid policy was admitted, learned Counsel for the appellant argued before the Hon'ble Single Judge that in view of a decision of this Court rendered by a Division Bench in a Letter Patent Appeal in the case of Oriental Insurance Co. Ltd. Vs. Akadasi Das and Another, the matter should be remitted back to the Commissioner for determining the issue as to whether any of the conditions in the policy had been violated by the insured. It was further argued that in the event it is found that there is any violation of the conditions stipulated in the policy by the insured, even if compensation is directed to be paid by the insurer, the same should be reimbursed by the insured to the insurer. The decision of the Apex Court in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., was also brought to the notice of the Hon'ble Single Judge. The Hon'ble Single Judge in the referral order also referred to another decision of the Apex Court in the case of United India Insurance Company Ltd. Vs. Lehu and Others, and on examination of Section 149 of the Motor Vehicles Act, 1988 made reference to a Larger Bench and accordingly this matter has come before this Bench to answer the reference.

4. Shri N.K. Mishra, learned Counsel for the appellant drew attention of the Court to the decision rendered by a Division Bench of this Court in a Letter Patent Appeal which is the basis for this reference. In the said case both the deceased persons were going in a Truck as Helper and Coolie from Marsaghai to Chandikhole. On the way the Truck collided with a Mini Truck as a result of which both the deceased persons sustained injuries and died subsequently. Both of them having sustained injury in the accident in course of employment the claim applications were filed before the Commissioner for Workmen's Compensation, Cuttack. The Insurance company filed written statement denying its liability as well as the facts alleged in the claim petition. The Commissioner, Workmen's Compensation after considering the evidence on record passed Awards in both the cases. Both the judgments were challenged in two separate appeals before this Court and the said appeals having been dismissed, Letter Patent Appeals were filed. It was contended by the insurance company who was appellant before this Court that the driver of the offending vehicle had no driving licence and as such there was violation of conditions of the insurance policy and therefore the

insurance company had no obligation to pay compensation. The Division Bench referring to the decision rendered by the Apex Court in the case of *New India Assurance Co., Shimla v. Kamla and Ors.* (supra) held that the Court had no other option except remitting the case back to the Commissioner for Workmen's Compensation to adjudicate upon the issue whether any of the conditions in the policy had been violated by the insured and in the event it is found that there has been violation of any of the conditions stipulated in the policy by the insured, even if compensation is paid by the insurer the same would be reimbursed by the insured to the insurer.

The Single Judge referring to the aforesaid two decisions and another decision of the Apex Court as stated earlier, was of the view that the decision of the Apex Court in the case of *New India Assurance Co., Shimla v. Kamla and Ors.* (supra) is based upon Section 149 of the M.V. Act, 1988, whereas there is no such similar provision available in the Workmen's Compensation Act.

For convenience the relevant portion of Section 149 of the M.V. Act, 1988 is quoted below :

(4) where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby reference to any conditions other than those in Clause (b) of Sub-section (1) of Section 147 be of no effect;-

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this Section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

5. Learned Counsel appearing for the parties at the time of hearing fairly submitted that the decision rendered by the Apex Court in the case of *New India Assurance Co., Shimla v. Kamla and Ors.* (supra) is based on Section 149 of the M.V. Act, 1988. Learned Counsel for the appellant Sri Mishra, could not place any similar provision in the Workmen's Compensation Act. We have also verified the Workmen's Compensation Act exhaustively and did not find any similar provision as that of Section 149 of the M.V. Act, 1988. Learned Counsel for the appellant Sri Mishra relied upon a decision of the Apex Court in the case of *Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another*, . The dispute in the said case was as to whether death was due to the motor accident or due to murder. After perusal of the entire judgment we do not find anything contained therein which is relevant for the purpose of answering the reference. Rather in this connection another decision of the Apex Court in the case of *National*

Insurance Co. Ltd. v. Mastan and Anr., reported in AIR 2005 SC 6305 is relevant. In the said case the claimant was working as cleaner in a lorry and the said lorry was involved in an accident resulting in sufferance of injuries by the claimant which led to disability to the extent of 45% to 50%. He initiated a proceeding under the Workmen's Compensation Act, 1923 (1923 Act) and claimed compensation. The Commissioner, Workmen's Compensation awarded a sum of Rs .2,70,264/- by way of compensation apart from interest to the tune of Rs. 33,230/-. The Insurance company preferred an appeal before the High Court u/s 30 of the 1923 Act and the same was dismissed on the premise that the appellant was not entitled to urge any ground which was not available to it under the relevant provisions of law. The matter was thereafter referred to a Larger Bench and the reference was "whether the restrictions on the defences available to an insurance company in terms of Section 149(2) of the M.V. Act have any application to the proceedings under the Workmen's Compensation Act.". The Larger Bench held that under the W.C. Act, in the insurance company can only agitate violation of any condition of the policy to make substantial question of law and therefore, the question of raising defences available in terms of Section 149(2) of the M.V. Act does not arise. The Apex Court under such circumstances observed and held as follows:

Section 143 of the 1988 Act limits its applicability to the 1923 Act in a case whether the liability arises despite of the fact that the accident might have taken place without any fault on the part of the driver of the vehicle or others in control thereof. Under the 1923 Act also, as noticed herein before, a workman is entitled to compensation even if no negligence is proved against the owner or any other person in charge of the vehicle. It is, thus, not possible to extend the applicability of Section 143 of the 1988 Act to include Chapter XI thereof to a claim under the 1923 Act.

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Under the 1988 Act, the driver of the vehicle is liable but he would not be liable in a case arising under the 1923 Act. If the driver of the vehicles has no licence, the insurer would not be liable to indemnify the insured. In a given situation, the Accident Claims Tribunal, having regard to its rights and liabilities vis-a-vis the third person may direct the insurance company to meet the liabilities of the insurer permitting it to recover the same fro the insured. Role of Reference by incorporation has limited application. A limited right to defend a claim petition arising under one statute cannot be held to be applicable in a claim petition arising under a different statute unless there exists express provision therefor. Section 143 of the 1988 Act makes the provisions of the 1923 Act applicable only in a case arising out of no fault liability, as contained in Chapter X of the 1988 Act. The provisions of Section 143, therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. A fortiori in a claim arising under Chapter XI, the provisions of the 1923 Act will have no application. A party to a lis, having regard to the different provisions of the two

Acts cannot enforce liabilities of the insurer under both the Acts. He has to elect for one.

Hon"ble Justice P.K. Balasubramanyan while agreeing with the views taken also separately observed thus:

On the language of Section 167 of the Motor Vehicles Act, and going by the principle of election of remedies, a claimant opting to proceed under the Workmen's Compensation Act cannot take recourse to or draw inspiration from any of the provisions of the Motor Vehicles Act, 1988 other than what is specifically saved by Section 167 of the Act. Section 167 of the Act gives a claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 deals with what is known as "no fault" liability in case of an accident. Section 140 of the Motor Vehicles Act, 1988 imposes a liability on the owner of the vehicle to pay the compensation fixed therein, even if no fault is established against the driver or owner of the vehicle. Sections 141 and 142 deal with the particular claims on the basis of no fault liability and Section 143 re-emphasizes what is emphasized by Section 167 of the Act that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the claim is made under the Workmen's Compensation Act. Section 144 of the Act gives the provisions of Chapter X of the Motor Vehicles Act, 1988 overriding effect.

In view of what has been decided by the Apex Court in the aforesaid case as referred to above, the reference made by the Hon"ble Single Judge stands answered.

6. From the discussions made by the Apex Court in the aforesaid case it is clear that the Motor Vehicles Act, 1988 and Workmen's Compensation Act, 1923 are self contained Codes. Section 143 in Chapter X of the Motor Vehicles Act, 1988 only relates to certain claims under Workmen's Compensation Act, 1923. Section 143 of the M.V. Act, 1988 provides that the provisions of Chapter X shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to in Sub-section (1) of Section 140. Section 140 in Chapter X only relates to "no fault" claim. Therefore, the Apex Court in the aforesaid judgment in para 22 observed that Section 143 of the 1988 Act makes a provision that 1923 Act is applicable only in a case arising out of "no fault" liability as contained in Chapter X of 1988 Act. The Court further held that the provision of Section 143 therefore cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. In para 23 and 24 of the judgment the Apex Court held that Section 167 of the 1988 Act statutorily provides for an option to the claimant stating that where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 of the 1988 Act contains a non-

obstante clause providing for such an option notwithstanding anything contained in the 1923 Act. In para 22 and 35 of the judgment, the Apex Court having laid down that under the 1988 Act if the driver of the vehicle has no licence, the insurer shall not be liable to indemnify the insured and that in a given situation the Accident Claims Tribunal having regard to its rights and liabilities vis-a-vis the third person may direct the insurance company to meet the liabilities of the insurer permitting it to recover the same from the insured and that the 1923 Act does not envisage such a situation, we are of the view that the decision rendered in the case of Oriental Insurance Co. Ltd. v. Akadasi Das and Anr. has not been correctly decided.

With the aforesaid finding, the matter is remitted back to the Hon''ble Single Judge for disposal in accordance with law.

B.P. Das, J.

7. I agree

A.K. Samantaray J.

8. I agree.