
(2002) 11 OHC CK 0002
In the Orissa High Court
Case No : A.H.O. No. 16 of 1997

National Insurance Co. Ltd.		APPELLANT
	Vs	
Sanjulata Mallik and Others		RESPONDENT

Date of Decision : 21-11-2002

Acts Referred:

Citation : (2003) 1 OLR 229

Hon'ble Judges : R.K. Patra, J;P.K. Misra, J

Bench : Division Bench

Advocate : S.D. Das, A.K. Choudhury, L. Samantaray, A.K. Nayak, H.N. Satapathy and B.N. Udgata, for the Appellant; S.K. Das, B. Rout and B.C. Pradhan for Respondents 1 to 4, B.B. Mishra and B.C. Jena, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The insurer is the appellant which has filed this Letters Patent appeal challenging the validity of the order dated 27.2.1997 passed by a learned Single Judge, who substantially dismissed its appeal which was directed against the order of the Commissioner under the Workmen's Compensation Act, 1923 granting compensation to respondents 1 to 4.

2. FACTS : Respondents 1 to 4 are legal heirs of deceased Babana Mallik. They filed W.C. Case No. 181-D of 1991 before the Commissioner claiming a sum of Rs. 70,000/- as compensation on account of injuries sustained by the said Babana Mallik in an accident arising out of and in course of employment as a Coolie in the truck bearing registration on ORY 1196 belonging to Kumar Swain (respondent No. 5). The accident took place on 6.1.1991 between 10 a.m. to 11 a.m. at Gagala Pahada. While the said Babana Mallik was lifting a stone to load it in the truck, a big boulder rolled down from the quarry and fell on him. as a result of which he sustained serious injuries on his person. He was shifted to Cuttack Medical College and Hospital immediately, but he succumbed to the same. He was aged about 27 years and was earning Rs. 800/- per month as salary and Rs. 10/- per day as food allowance.

3. The owner of the truck (respondent No. 5) in his written statement admitted the accident and employment of Babana Mallik under him. He, however, denied his liability to pay any compensation on the ground that the vehicle having been validly insured with the appellant, it has to pay the compensation.

`The appellant filed its written statement denying all the averments made in the claim petition.

4. On the basis of the evidence adduced in the case, the Commissioner by order dated 17.5.1995 held that the deceased- Babana Mallik was a workman under the employer (respondent No. 5) and he died in the accident arising out of and in course of his employment. By taking into account his age and wages, he determined compensation at Rs. 63.059.20. The Commissioner did not accept the plea of the appellant that it is not liable to pay compensation because the driver of the truck had no valid driving licence. Against the said order of the Commissioner, the appellant preferred M.A. No. 310 of 1995. The learned Single Judge by the order under appeal merely set aside the Commissioner's order regarding payment of interest and penalty. By reiterating its objection, the appellant contended before the learned Single Judge that the driving licence of the driver of the vehicle was renewed basing on a fake licence and, as such, there was violation of the policy condition, for which it is not liable to pay any compensation. This objection was not accepted by the learned Single Judge who observed that once licence was renewed it got validated.

5. The question as to the effect of renewal of a fake driving licence came up for consideration recently before the Supreme Court in *New India Assurance Co. v. Kamala* AIR 001 SC 1419. The Supreme Court held that if a fake driving licence is renewed by the statutory authority, the fakeness of the original document does not get legally sanctified and the Insurance Company cannot be held liable to pay compensation in respect of the motor accident occurred while the vehicle was driven by a person holding a sham licence.

In view of the law laid down by the Supreme Court in the aforesaid case, we have no hesitation to hold that the finding recorded by the learned Single Judge that since the driving licence was renewed, it got validated cannot be supported.

6. The aforesaid being the legal position. the question that arises for consideration is whether on the facts as found. the consequence of renewal of fake driving licence does arise. Since the Commissioner has not approached and considered the matter in its proper perspective, as observed by us we, setting aside his order as well as the order of the learned Single Judge, remit the matter to him for fresh disposal according to law. He is directed to dispose of the matter as expeditiously as possible, preferably within four months of receipt of this order after giving notice to all concerned.

The appellant may therefore take back the amount, which is lying in deposit with the Registry.,

The appeal is accordingly allowed.

L. C. R. be sent back forthwith.

P.K. Misra, J.

7. I agree