

(2007) 05 OHC CK 0064
In the Orissa High Court

National Insurance Company Ltd.

APPELLANT

Vs

Gatikrushna Sahu and Others

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2008) ACJ 2122 : (2007) 104 CLT 349 : (2007) 115 FLR 263 : (2007) 1 OLR 987 Supp

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Mahanty, J.—The National Insurance Company Limited herein has sought to challenge the award Judgment dated 9.11.2001 passed by the Commissioner under Workmen's Compensation Act-cum-Assistant Labour Commissioner, Dhenkanal, Angul (hereinafter referred to as the "Commissioner") in W.C. Case No. 43 of 1997.

2. The case of the Respondent Nos. 1 and 2 is that they are parents of one deceased Sukadev Sahoo, who died in course of his employment while working as a Driver under Respondent No. 3, who is the owner of the vehicle bearing registration number. OR-05-E-0636. It is alleged in the claim petition that at the time of accident, the deceased was twenty-five years old and was getting Rs. 1200/- per month from the Respondent No. 3. Respondent No. 3, owner of the vehicle appeared before the Learned Commissioner and filed a written statement admitting employment of deceased-Sukadev Sahoo as the driver and also admitting that the death of deceased was due to the accident, but disowned his liability on the ground that his vehicle had been validly insured under the Appellant-insurance company and under the indemnity clause of the policy, the present Appellant-company is liable to pay the compensation to the defendants of the deceased.

3. The Appellant-company appeared before the Learned Commissioner and filed

its written statement. While contesting the case on merit, it disowned the liability and denied the averments made in the claim application including the accident, employment, age and wage of the deceased and called upon Respondent Nos. 1 and 2 to prove their case.

4. After going through the material available on record placed before the Learned Commissioner, he came to the finding that the deceased was a workman under Respondent No. 3 and his dependants Respondent Nos. 1 and 2 are entitled to compensation and awarded a compensation of Rs. 1,30,146/- payable by the Appellant-company in favour of the claimants and further directed the amount should be deposited by 15.12.2001, failing which interest shall be charged as per the provision of law.

5. The Appellant-company in the present appeal challenges the impugned Judgment on the ground that the deceased had a "forged driving licence" and they had lodged a complaint with the State Vigilance Department to ascertain the genuineness of the driving licence and in response to the Appellant's query, the Vigilance Department vide their letter No. 917 dated 7.9.2000 affirmed that the licence of the deceased was renewed till 31.12.1995, but on the date of accident, the deceased was not possessing a valid driving licence. It would be pertinent to point out here that this fact was not brought to the notice of the Commissioner during the claim proceeding, but the letter of the Inspector of Police, Vigilance, Angul Unit, Angul was placed before this Court in the present appeal by the Learned Counsel for the Appellant.

6. None appears for the Respondents in the Court. As the matter is pending since long, I am of the view that no useful purpose would be served in keeping this appeal pending and accordingly the appeal was heard and is being disposed of by the present Judgment.

7. The content of the letter of the Inspector of Police, Vigilance, Angul Unit, Angul, does not support the contention advanced by the Learned Counsel for the Appellantcompany that the driving license of the deceased was "forged". On the contrary, the said letter confirms that the deceased had a valid driving licence, which was valid till "31.12.1995" and not "31.12.1998" as claimed by the Claimants and at best, it goes to establish that on the date of accident, i.e., on 6.4.1997 the deceased workman did not have a valid driving license.

8. In this respect the decision of a division bench of this Court in the case of Divisional Manager, Boudh Commercial Division, Orissa Forest Development Corporation Ltd. v. Janakalata Barik and Ors. reported in 2001 (I) OLR 535 was relied on for various clauses of the Certificate of Insurance which reads as follows:

...A perusal of the aforesaid Certificate of Insurance indicates under the heading "Persons or classes of persons entitled to drive:

(a) The Insured.

(b) Any other person who is driving on the licensee's order or with his permission, provided that the person driving holds or had held and has not been disqualified from holding an effective driving licence with all the required endorsements thereon as per the Motor Vehicles Act, 1988....

The defence of the Insurance Company is obviously based upon the provisions contained in Section 149(2)(a)(ii). The relevant provisions are extracted hereunder:

149(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any Judgment or award unless, before the commencement of the proceedings which the Judgment or award is given the insurer had notice through the Court of as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such Judgment or award, so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions namely:

(i) a condition excluding the use of the vehicle-

(a) to (d)

(ii) a condition excluding driving by a "named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or....

The ground of defense is available if there is breach of a specified condition of the policy. The Insurance Company is authorized to issue any policy incorporating conditions excluding driving by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining the driving licence during the period of disqualification. If such conditions are not included in the policy, there cannot be any breach of the policy. In other words, the question of exclusion of the liability of the Insurance Company would be depend upon the terms and conditions of the policy. It is always open to the Insurer to incorporate conditions envisaged in the Act. The exoneration from liability would be on the ground that there is violation of a specified condition of the policy. It is, of course, true that such incorporated conditions must be a condition enumerated in Section 149 and not beyond such enumerated conditions. The provisions contained in Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988, only enable the Insurance Company to take up such defenses, provided that such conditions have been incorporated. From the conditions of the policy, already extracted, it is clear that any person who had held a driving licence, but is not disqualified from holding a driving licence is also permitted to drive the vehicle. In the present case, apparently, the driver had a valid driving licence, but the tenure of the licence had expired. There is no material to indicate that the time of the

accident, the driver had incurred any of the disqualifications, as contemplated under the Act or the Rules. It cannot be said that he was disqualified to hold or obtain a licence. By specifically incorporating such a clause in the policy, it is apparent that the Insurer has permitted for driving of the vehicle by a person who had held a driving licence prior to the date of accident, but was not disqualified to hold a licence at the relevant time, that is to say, at the time of accident. Therefore, even though on the date of accident there was no valid driving licence, since the driver had held a driving licence and was not disqualified to hold a driving licence, it cannot be said that there has been any violation of any specified conditions of the policy. Section 149 of the Motor Vehicles Act only contemplates restrictions, which can be imposed by the Insurance Company by incorporating the conditions in the policy. The exclusion of liability is not on the basis of Section 149 itself, but on the basis of any violation of the terms and conditions which are permissible to be imposed in the policy. Since the policy itself had permitted a person who had held a driving licence, obviously in the past, but was not disqualified to hold licence at the time of accident, there is no violation of the condition. The aforesaid view taken by me gains support from the decision reported in AIR 1975 Mad. 250 Madras Motor and General Insurance Co. Ltd. v. Madathi Ammal and Anr.

9. The Judgment under reference answers the question raised by the Learned Counsel for the Appellant inasmuch as it cannot be said that there has been violation of any specific condition of the policy since the deceased driver had held a driving licence (though not renewed) and was not disqualified to hold the same though he was not holding a valid driving licence on the date of accident. Section 149 of the Motor Vehicles Act only contemplates restrictions, which can be imposed by the Insurance Company by incorporating the conditions in the policy. The exclusion of liability is not on the basis of Section 149 itself, but on the basis of any violation of the terms and conditions which are permissible to be imposed in the policy. Since the policy itself had permitted a person who had held a driving licence, obviously in the past, and was not disqualified to hold licence at the time of accident, there is no violation of the condition in the insurance certificate.

10. Accordingly, for the reasons as aforesaid, this appeal stands dismissed. Since the Appellant-company had deposited the entire awarded amount before the Commissioner under Workmen's Compensation Apt-cum-Assistant Labour Commissioner, Dhenkanal, Angul, I direct that the awarded amount be released in favour of the claimant-Respondents on proper identification along with the interest accrued thereon.