

(2009) 10 OHC CK 0037
In the Orissa High Court

National Insurance Company Ltd.

APPELLANT

Vs

Krishna Mitra and Another

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2009) 108 CLT 868 : (2009) 2 OLR 991 Supp

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Judgement

B.N. Mahapatra, J.—Though this matter was listed for admission, on being mentioned, it was taken up for final disposal with the consent of both the sides.

This is an appeal u/s 173(1) of the Motor Vehicles Act, 1988 (for short "the Act") filed by the Insurance Company, challenging the award dated 24.05.2004 passed by the 2nd Motor Accident Claims Tribunal, Cuttack (for short "the Tribunal"), in Misc. Case No. 1187 of 1997.

2. The facts as stated by the claimant before the Learned Tribunal were that on 10.10.1997 in between 5.00 P.M. & 6.00 P.M. in front of Cuttack Diesel near O.M.P. Square, Cuttack, while the claimant-Respondent was going on a scooter bearing Registration No. OAU 5657 with her husband & niece as pillion riders from Raghunathpur towards Cuttack, the offending Truck bearing Registration No. ORU 2712 being driven in rash & negligent manner came from the back side & dashed against the scooter. As a result of such accident, the claimant Respondent sustained injuries on her person. The claimant Respondent sustained 1 fracture injuries on her left pelvis, ribs & other injuries on her person including belly. The claimant-Respondent underwent treatment in S.C.B. Medical College & Hospital, Cuttack, as an indoor patient for about one month & incurred expenditure of Rs. 1,00,000. The further case of the claimant- Respondent before the Learned Tribunal was that her monthly income from tailoring was Rs. 3,500. The offending vehicle was owned by Opposite Party No. 1 & insured with Opposite Party No. 2, National Insurance Company vide cover note No. 559416

valid from 1.2.1997 to 28.2.1998. With the above averments, the claimant-Respondent filed a claim petition before the Learned Tribunal claiming a compensation of Rs. 2,00,000. The owner of the vehicle filed its written statement admitting himself to be the owner of the offending vehicle & its insurance with Opposite Party No. 2. The Insurance Company also filed its written statement denying the claim averments in entirety made by the claimant.

3. On the above pleadings, the Learned Tribunal framed the following issues-

(i) Are the claims maintainable?

(ii) Whether the Petitioner sustained injuries due to rash & negligent driving of the vehicle bearing registration No. ORU 2712 by the driver? If the Petitioner is entitled to get any compensation & if so, to what extent & from whom?

(iii) To what relief, if any, is the Petitioner entitled?

The claimant examined two witnesses on her behalf including herself & her husband & filed eleven documents, which were marked as Exts. 1 to 11. The Insurance Company examined one witness & filed four documents, which were marked as Exts. A to B/1. The Tribunal, on considering the oral as well as the documentary evidence & rival contentions of the parties, awarded compensation of Rs. 35,000 & directed the Insurance Company to pay the said compensation to the claimant-Respondent along with simple interest at the rate of 9% per annum with the consolidated cost of Rs. 100 within a period of thirty days from 17.12.1997, i.e., date of filing of the claim application till the date of realization. The Tribunal further directed that out of the compensation amount, a sum of Rs. 50,000 shall be kept in shape of art unencumberable fixed deposit in a nationalized bank in the name of the claimant-Respondent for a period of six years & the cost & balance shall be paid to her in shape of cash.

4. Being aggrieved by the impugned award, the Insurance Company has preferred the present appeal. The claimant - Respondent has filed cross-objection for enhancement of the amount of compensation.

5. Learned Counsel appearing on behalf of the Insurance Company submitted that the claimant was a pillion rider. Since pillion rider is a gratuitous passenger, the claimant-Respondent is not entitled to get any compensation for the injuries sustained by her in the accident from the Appellant-Insurance Company. In support the contention, the Learned Counsel relied on the Judgments of the Apex Court in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. and Others, , The General Manager, United Insurance Co. Ltd. Vs. M. Laxmi and Others, , & the Judgment of the Andhra Pradesh High Court In United India Insurance Co. Ltd. Vs. Muppala Anasuryanvathi and Others, . It was further submitted that if this Court holds that the pillion rider is entitled to get any compensation, considering the nature of the injuries sustained by the claimant-Respondent the amount of compensation & interest awarded by the Learned Tribunal appeared to be high &

excessive. Dr. T. Mohanty, Learned Senior Advocate appearing on behalf of the claimant-Respondent submitted that the amount of compensation awarded by the Learned Tribunal is not adequate & the same should be enhanced. Since the finding of the Tribunal is that the claimant-Respondent sustained injuries due to rash & negligent driving of the driver of the offending truck, which was covered by the Insurance Policy, the pillion rider is also entitled to get compensation from the Appellant Insurance Company. He also submitted that she filed disability certificate & though the same was admitted into evidence as Ext. 10, the Learned Tribunal has not taken the same into consideration while determining the amount of compensation. According to the said disability certificate, the extent of disability is 50%. Dr. Mohanty further submitted that since the accident took place more than eleven years back, the same may be disposed of in the spirit of Lokadalat.

6. The decisions of the Apex Court & the Andhra Pradesh High Court relied on by the Learned Counsel for the Appellant-Insurance Company are of no help to the Appellant. In these cases, the liability of the insurer of different vehicles in respect of pillion rider/gratuitous passenger has been decided in terms of the Insurance Policy. In the case at hand, this Court is concerned with the liability of the insurer of the offending truck for whose rash & negligent driving the pillion rider of scooter sustained injury on her person. In *Tilak Singh and Ors. case (supra)*, the issue before the Apex Court was whether a statutory Insurance Policy under the Motor Vehicles Act, 1988 intended to cover the risk to life or damage to properties of third parties, would cover the risk of death or injury to a gratuitous passenger carried in a private vehicle, The Apex Court held that although the observations made in *New India Assurance Co. Ltd. v. Asha Rani and Ors. (2003) 2 SCC 223* were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. The Appellant-Insurance Company owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, & hence it did not cover the risk of death of or bodily injury to a gratuitous passenger. In *Sudhakaran K. v. and Ors. case (supra)*, the question that arose to be decided by the Apex Court was whether a pillion rider on a scooter would be a "third party" within the meaning of Section 147 of the Motor Vehicles Act, 1988. Answering the question in negative, the Apex Court held that a distinction has to be made between a contract of Insurance in regard to a third party & the owner or the driver of the vehicle. In terms of Section 147 of the Act, a contract of insurance must be taken by the owners of the vehicle only in regard to reimbursement of the claim to a third party. Section 147 is imperative in nature. When an owner of a vehicle intends to cover himself from other risks, it is permissible to enter into a contract of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof. The liability of the insurer to reimburse the owner in respect of a claim made by the third party is thus statutory, whereas other claims are not. In the above case, it is further held that a

gratuitous passenger in a goods carriage would not be covered by a contract of insurance entered into by & between the insurer & the owner of the vehicle in terms of Section 147 of the Act. Tilak Singh case (supra), extended the said principle to all other categories of vehicles. In Tilak Singh's case, on facts it was held that the concerned Insurance Company owed no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy, & hence it did not cover the risk of death or bodily injury to a gratuitous passenger. In M. Laxmi and Ors. case (supra), the Apex Court upheld the order of the M.A.C.T. by which it was held that where admittedly the policy of insurance was an Act policy & the deceased was a pillion rider & also gratuitous passenger & hence, not a third party, the pillion rider cannot claim compensation from the insurance company which insured the vehicle. In Muppala Anasuryavathi and Ors. Case (supra), the Andhra Pradesh High Court held that since Ext.B/1 is an Act policy, it covers the risk of only third parties. It does not even cover the risk of the driver of a scooter. Merely because the scooter has capacity to carry two persons, it does not mean that an Act policy taken by its owner covers the risk of two persons traveling on it. "Third party" In the Insurance parlance is a person who is not traveling in or on the vehicle, which is insured. So persons not traveling in or on the vehicle insured only would be covered by third party risk. Persons traveling in or on a vehicle would not be covered by that policy because they are not "third parties". Since no extra premium is paid for covering the risk of the driver & pillion rider, Respondent No. 3 is not liable to pay the compensation payable to the claimants. Thus, where the pillion rider is a gratuitous passenger & the policy of the insurance is an Act Policy, the insurer of the scooter is not liable to pay the compensation to the pillion rider. In cases where extra premium is paid for covering the risk of driver & pillion rider, the Insurance Company is liable to pay compensation payable to them. However, the pillion rider riding the scooter cannot be said to be a gratuitous passenger of the offending truck.

7. In view of the above, this Court is of the considered opinion that the insurer of the offending truck is liable to pay the amount of compensation to the pillion rider of the scooter who sustained injuries on her person as the offending truck was covered by a valid insurance policy at the time of accident.

8. Taking into consideration the submissions made by the Learned Counsel for the parties & going through the award passed by the Tribunal, nature of the injuries on the person of the claimant, period of treatment in hospital, loss of income etc., this Court feels that in the present case the amount of compensation of Rs. 35,000 awarded by the Tribunal appears to be just & proper. So far as the interest part is concerned, the Tribunal has awarded 9% interest per annum which appears to be little higher. This Court feels that 7% interest per annum will be just & proper instead of 9% interest.

9. In view of the above, the Appellant-Insurance Company is directed to pay a sum of Rs. 35,000 (rupees thirty five thousand) to the claimant-Respondent

towards compensation along with interest at the rate of 7% per annum from the date of filing of claim application, i.e., 17.12.1997 till the date of deposit before the Tribunal besides consolidated cost of Rs. 100. The entire amount be deposited before the Tribunal within a period of eight weeks from today. After the said revised amount is deposited, the same shall be disbursed by the Tribunal in favour of the claimant- Respondent in the manner it has directed in its award. Further, it is directed that the statutory amount of Rs. 17,500 deposited by the Appellant may be refunded to the Appellant-Insurance Company along with the accrued interest on production of a receipt before the Registrar (Judicial) of this Court showing deposit of the compensation amount with interest before the Tribunal as directed above.

10. In the result, the appeal is allowed in part & the cross-objection stands dismissed.