

(2007) 06 OHC CK 0016
In the Orissa High Court
Case No : Misc. Appeal No. 97 of 2003

National Insurance Company Ltd.

APPELLANT

Vs

Pramila Panda and Others

RESPONDENT

Date of Decision : 29-06-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2007) CLT 192 Supp

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Advocate : R. Mohapatra, R.K. Mohapatra-2, M.K. Mohapatra, P. Jena and S.K. Dalai, for the Appellant; B. Singh, J.K. Mohanty, S.K. Das for Respondents-1 to 4, P.R. Singh, P.K. Deo and T.K. Dwibedi for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

1. Mahanty, J.—The National Insurance Company Limited, the Appellant, herein, has sought to challenge the award dated 23.12.2002 passed by the Third Motor Accident Claims Tribunal, Balasore in M.A.C.T. Case No. 130 I 38 (c) of 1996-95.

2. The facts of the case in brief is that one Rama Narayan Panda died in an accident that took place on 29.8.1994. The Respondent Nos. 1 to 4 who are the widow wife and children of the said deceased Rama Narayan Panda, filed an application u/s 166 of the Motor Vehicles Act, claiming compensation of Rs. 2,00,000/- before the Third Motor Accident Claims Tribunal, Balasore. The application so filed was registered as MACT Case No. 130/38 (c) of 1996-95. The Respondent No. 1 is the wife of the deceased Rama Panda and Respondent No. 2 to 4 being minor children of the deceased are represented by the mother guardian (Respondent No. 1).

3. The case of the claimant-Respondents is that in the evening of 29.8.1994 at about 7.30 P.M. when the deceased was standing on the left side of the road near Matiapola village located on National High Way No. 5, a truck bearing

registration No. ORJ-997 being driven in a high speed and in negligent manner came from the direction of Bhadrak and dashed against the deceased from the behind and fled away. Due to said accident, deceased sustained grievous injuries on his person and while he was being shifted to the District Headquarter Hospital, on the way he passed away on the same day.

4. Soro P.S. Case No. 169 of 1994 was registered with regard to the said accident and investigation was started and after completion of investigation, final report was submitted. The Respondent No. 1 alleging inaction on the part of Police, filed 1. C.C. case No. 165 of 1994 against Akash Khan, (Respondent No. 5) driver of the offending vehicle before the Judicial Magistrate of First Class, Soro. The Respondent No. 1 in her complaint petition also alleged that Respondent No. 5 Akash Khan apart from being the driver was also the owner of the vehicle and that the offending truck was insured with the Appellant-company herein and as such it is liable to pay the compensation for death of the deceased. It was stated that at the time of accident, the deceased was aged about 43 years and was engaged in the business of electrical goods and motor binding at Khantapada Market as well as having a rice and wheat grinder and also supplying rice. His monthly income was claimed to be Rs. 3000/- (rupees three thousand), which was the main source for maintenance of his family.

5. The Respondent No. 5, the owner of the offending vehicle despite notice did not appear and as such he was set ex-parte by the Third Motor Accident Claims Tribunal, Balasore.

6. The Appellant-Insurance Company after receipt of notice entered appearance and filed a written statement denying all the averments made in the claim petition and further stating that the claim petition was not maintainable and amount of compensation was excessive and that the claimants had failed to furnish the full particulars of the insurance policy of the offending vehicle and denied having insured the offending vehicle and further that the owner of the vehicle had not forwarded any claim and/or intimation about the accident to the insurer and further that the driver of the offending vehicle had no valid driving license at the time of occurrence.

7. The Learned Tribunal after hearing the parties passed an award on 23.12.2002, allowing the Misc. case in part on contest and directed that the Appellant-Insurance company to pay compensation of Rs. 81,000 (Rupees eight one thousand) to the Respondent No. 1 on certain terms and conditions stipulated therein.

8. Mr. Mohapatra, Learned Counsel appearing for the Appellant Insurance Company strenuously contends that since the full particulars of the insurance-policy of the offending vehicle was not furnished by the claimants and since in the proceeding, the said policy was not proved the award is unsustainable.

9. The III-M.A.C.T., Balasore, while dealing with issue No. 1 in paragraph-12 of the Award came to hold that P.W. 2 (Sarat Chandra Panigrahi) who was an eye-

witness to the road accident, had also been examined as a witness in I.C.C. Case No. 165 of 1994 of the Court of Judicial Magistrate First Class, Soro. In the proceeding before the IIIM.A.C.T., Balasore, a certified copy of the Order Dated 13.1.1995 passed by the Judicial Magistrate First Class, Soro was exhibited as Exhibit-1. Exhibit-1 discloses that Akash Khan-O.P. 1 was the owner of the truck bearing registration No. O.R.J. 997, which has been insured till 13.10.1994. Further certified copy of the judgment passed in I.C.C. Case No. 165 of 1994 of the Court of Judicial Magistrate First Class, Soro which has been exhibited as Exhibit-4 clearly discloses that Akash Khan-O.P. No. 1 was convicted under Sections 279 and 304-A of the Indian Penal Code, for causing the death of one Rama Narayan Panda on 29.8.1994 by rash and negligent driving of the truck bearing registration No. O.R.J. 997 and he was sentenced to under go simple imprisonment for six months and two years under Sections-279 and 304-A of the Indian Penal Code respectively.

10. On consideration of the aforesaid clear finding arrived at by the III-M.A.C.T., Balasore, it is abundantly clear that the truck bearing registration number O.R.J. 997 had been insured till 13.10.1994 and the accident leading to the death of Rama Narayan Panda took place on 29.8.1994, i.e., during the period under which the truck was insured with the present Appellant-Insurance Company. This finding of fact is adequate for the purpose of discarding the contentions advanced on behalf of the Appellant-Insurance Company and while concurring with the finding arrived at by the III-M.A.C.T., Balasore on the amount awarded, I am of the view that Exhibits-1 and 4 clearly establish the fact that the offending vehicle was duly insured with the insurance-Insurance Company on the date of accident and therefore, I am not inclined to accept the contentions advanced by the Learned Counsel for the Appellant-Insurance Company.

11. Accordingly, for the reasons as aforesaid, this appeal stands dismissed, but in the circumstances without cost. The amount deposited with Registrar (Judicial) of this Court along with accrued interest be returned to the III-M.A.C.T., Balasore for disbursement of the same to the claimants in terms of the Award dated 23.12.2002 passed by the III-M.A.C.T., Balasore.