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**(1986) 08 OHC CK 0030**  
**In the Orissa High Court**

National Insurance Company Ltd.

APPELLANT

Vs

Sukanta Kumar Samal and Others

RESPONDENT

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**Date of Decision :** 22-08-1986

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110A, 110D

**Citation :** (1986) 2 ACC 537 : (1987) ACJ 1036

**Hon'ble Judges :** S.C. Mohapatra, J

**Bench :** Single Bench

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**Judgement**

S.C. Mohapatra, J.—This is an appeal by the insurer u/s 110-D of the Motor Vehicles Act, 1939 (for short "the Act").

2. On 25-11-1979 near Kandarpur petrol pump an auto-rickshaw bearing registration No OSC 7231 faced with an accident resulting fatal injuries on the husband of the claimant No. 1. Widow and minor children filed an application u/s 110-A of the Act asserting that the autorickshaw dashed against the deceased who was coming on the road resulting in his death. As seen from the petition, originally it was typed out that the deceased was coming in the auto-rickshaw which was corrected to be "coming on the road". A copy without correction was served on the insurer where the assertion was that the deceased was coming in the auto-rickshaw. In view of such assertion in the claim petition, the insurer filed its objection stating that its liability would only be confined to Rs. 15,000/- and not more as the deceased was a passenger. The owner appeared on the same day as the insurer through the same Lawyer of the insurer. He did not file any written objection. The Tribunal on consideration of the evidence on record, came to the conclusion that the deceased was not a passenger in the auto-rickshaw which dashed against him causing the fatal injuries. In that view of the matter, the paltry amount of Rs. 30,000/- claimed as compensation was awarded and the insurer was directed to pay the same.

3. Mr. P. Roy, the learned Counsel appearing for the appellant, submitted that the basis of the claim being that the deceased was a passenger in the auto-rickshaw,

the Tribunal ought to have considered the case in that light and ought not to have held that the deceased was not a passenger in the auto-rickshaw. On reading the claim application the basis of the submission of Mr. P. Roy is found to be incorrect. The same was the submission before the Tribunal which was rejected. Even if the basis would have been the same as claimed by Mr. P. Roy, I would not have accepted the same since out of two witnesses examined in this case, P.W. 1 is the claimant No. 1 who was not present at the spot and P.W. 2 is an eye-witness to the accident. There is no dispute by Mr. Roy that the claimant No. 1 was not on the spot. Her statement is that she received information from P.W. 2. Therefore, the strict rule of pleading should not be made applicable.

4. Mr. P. Roy, thereafter submitted that the evidence of P.W. 2 who claim to be an eye-witness does not inspire confidence. He submitted that the owner not having appeared, the scope of challenge by the insurer became a limited. If the owner would have appeared and examined the driver, who is the material witness, the fact would have been clear that the deceased was the occupant of the auto-rickshaw. Mr. Roy further urged that the owner ought to have taken steps for calling for the police records which would have fully corroborated the claim statement that the deceased was the occupant in the auto-rickshaw. Accordingly, the conduct of the owner is such that it would amount to collusion with the claimant just to shackle the liability on the insurer and defeat the term in the policy that in case of a passenger in a vehicle the liability would be limited to Rs. 15,000/- only.

5. What Mr. Roy submits would have been very correct as is revealed from the records of this case. Unfortunately, in this case, the same Lawyer appeared for the insurer and the owner. Owners of the vehicles and the insurers should always make endeavour to assist the Tribunal to arrive at correct findings. Because of the limitations u/s 96 of the Act and the Rules made u/s 110-A of the Act the scope to challenge of an insurer is very limited. It has the scope of challenging the merit where the owner does not contest or colluded with the claimants. If this plea would have been taken before the Tribunal by engaging another counsel, I would have no hesitation to set aside the award and to remit back the case for re-hearing to give opportunity to the insurer to call for the police records, medical records and also to examine the driver. But from the record I find that the same Lawyer appearing for the owner and insurer without any demur entered in contest. The conduct of the owner in engaging the same Lawyer before the Tribunal and not filing objection or adducing evidence may be sufficient to recover the legitimate amount from the owner in case under the law the insurer is so entitled of which I express no opinion. This would not, however, be a ground to set aside the award.

6. On the materials available on the record, I have no hesitation to accept the statement of the eye-witness (P.W. 2) in the absence of any other material to contradict the same. Thus, I am satisfied that on the facts and circumstances of this case, the ancillary finding of the Tribunal that the deceased was not a

passenger of the auto-rickshaw cannot be interfered with.

7. Mr. P. Roy challenges the claim on the ground of limitation. He submitted that the Tribunal having condoned the delay ex parte, the appellant had the right to question the same after appearance and merely on the ground of the delay being condoned ex parte, the matter is not concluded. Submission of Mr. P. Roy is justified in law. Tribunal was not correct in refusing to permit the appellant to raise the question of the application being barred by limitation. However, the appellant has not brought any new material to record to disbelieve the facts in the petition for condonation of delay. On perusal of the petition for condonation of delay, I am satisfied that there were sufficient cause for delayed filing of the claim petition and the delay was rightly condoned by the Tribunal.

8. As stated earlier, the amount of claim is a paltry sum of Rs. 30,000/-. Mr. Roy also very fairly submitted that the quantum determined in the case is not assailable.

9. In the result, I do not find any ground to interfere with the impugned order. The appeal is accordingly dismissed. There shall however, be no order as to costs.