(2022) 05 OHC CK 0012

In the Orissa High Court

Case No : MACA No. 783 Of 2011

National Insurance Company Ltd APPELLANT

Vs

Sushanta Kumar Dash And Another RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Citation : (2022) 05 OHC CK 0012

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : A.P. Dash, A. Pradhan

Final Decision : Disposed Of

Judgement

B.P. Routray,J.

1. The present appeal by the insurer is directed against the judgment dated 30th September, 2011 of learned Member, 2nd MACT, Sambalpur in M.A.C. Case No.145 of 2008 (S.B.P) wherein compensation to the tune of Rs.15,00,000/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 23rd July, 2008 has been granted on account of injuries sustained by the claimant – Respondent No.1 in the motor vehicular accident dated 4th April, 2005.

2. The insurer has mainly questioned its limit of liability to indemnify the compensation amount in respect of the present claimant – injured.

3. The facts relevant to be stated here are that while the claimant-injured along with five others were travelling in the offending vehicle, i.e. car bearing registration number OR-15-F-8727, it dashed against a tree resulting death of all its occupants including the driver, except present Respondent No.1 – the claimant. Admittedly, the offending vehicle was covered on the date of accident with a valid insurance policy limiting to five occupants including the driver for risk coverage. The dependents of other such deceased occupants of the vehicle

having preferred different claim applications got their respective compensation amounts. Treating present injured – Respondent No.1 as 6th occupant of the vehicle, the compensation in respect of him granted by the Tribunal has been challenged by the insurer on the ground that the 6th occupant, who is beyond the permit granted in respect of the vehicle in question, is not covered within the contract.

4. Thus the simple question involved in the present appeal is, whether the liability of the 6th occupant travelling in the vehicle beyond the permission granted and in breach of the conditions of the policy, to be saddled on the insurer?

5. It is the contention of the learned counsel for the Appellant that, since six occupants were traveling in the car (offending vehicle) and the permit was for five occupants only and accordingly the policy coverage was extended to same five numbers of occupants, the insurer is not responsible for payment of compensation for any more occupant exceeding five.

6. In the case of United India Insurance Co. Ltd. v. K.M. Poonam and Others, (2015) 15 SCC 297, where a large number of occupants were traveling in a Jeep which had sitting capacity of 6 persons including the driver, met with the accident and consequent claim applications were filed, the Hon'ble Supreme Court, after discussion of several case laws, viz. New India Assurance Company Ltd. v. Satpal Singh & Ors., (2000) 1 SCC 237, New India Assurance Co. Ltd. v. Asha Rani & Ors., (2003) 2 SCC 223, National Insurance Co. Ltd. v. Challa Bharathamma & Ors., 2004 AIR SCW 5301, National Insurance Co. Ltd. v. Anjana Shyam & Ors., (2007) 7 SCC 445, National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297, National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC, have held as follows:

"37. xx .. xx .. …. As mentioned hereinbefore, in the instant case, the insurance policy taken out by the owner of the vehicle was in respect of six passengers, including the driver, travelling in the vehicle in question. The liability for payment of the other passengers in excess of six passengers would be that of the owner of the vehicle who would be required to compensate the injured or the family of the deceased to the extent of compensation awarded by the Tribunal.

38. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this case, are faced with the same problem as had surfaced in Anjana Shyam case.

39. The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice we may apply the procedure adopted in Baljit Kaur's case and

direct that the Insurance Company should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the Insurance Policy from the owner of the vehicle, as was directed in Baljit Kaur's case.

40. In other words, the Appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the Insurance Policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six Awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the Awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle.

7. The facts in the instant case as seen similar to the case of K.M. Poonam (supra) and in view of the principles so decided by the Hon’ble Supreme Court, the Appellant – Insurer is held liable to pay the amount with right to recover the same from the owner. It needs to be mentioned here that as per submission of both parties the compensation amount in respect of the claimants of those five deceased occupants have already been disbursed in their favour and those amounts have been paid by the present Appellant – insurer on behalf of the owner. In view of such admitted position, the amount in respect of the present claimant – Respondent No.1 is thus considered in excess of the liability of the insurer and so, is liable to be recovered from the owner in appropriate proceeding.

8. It goes without saying that the quantum of compensation as directed by the learned Tribunal is not seriously questioned by the Appellant which otherwise also is found justified in the facts of the case keeping in view the educational qualification of the injured as well as his income tax return filed for the financial year 2003-04 under Exhibit-14.

9. Resultantly, the Appellant, i.e. National Insurance Co. Ltd. is directed to deposit entire compensation amount before the Tribunal along with interest as per its direction within a period of two months from today, where-after the same shall be disbursed in favour of the claimant – Respondent No.1 on the same terms as contained in the impugned judgment.

10. The statutory deposit made by the insurer – Appellant before this court along with accrued interest be refunded on proper application and on production of proof of deposit of the awarded amount before the tribunal.

11. With the aforesaid observations and directions the appeal is disposed of.

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