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**(1993) 07 OHC CK 0003**  
**In the Orissa High Court**

New India Assurance Co. Ltd.

APPELLANT

Vs

Madhusudan Rout and Another

RESPONDENT

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**Date of Decision :** 23-07-1993

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149, 168, 2

**Citation :** (1994) 1 ACC 33

**Hon'ble Judges :** A. Pasayat, J

**Bench :** Single Bench

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**Judgement**

A. Pasayat, J.—These appeals involve identical grounds of challenge and are, therefore, disposed of by this common judgment. New India Assurance Company Limited (hereinafter referred to as the "insurer") calls in question legality of the awards made by the Second Motor Accidents Claims Tribunal, Northern Division, Sambalpur (in short, the "Tribunal") granting compensation to respondent No. 1 in each case. Each of them is hereinafter described as "claimant" for the sake of convenience.

2. The background facts giving rise to the appeals sans unnecessary details are as follows:

On 6.11.1985 a bus bearing registration No. OPJ 4483 met with an accident as a result of which several passengers including the claimant sustained injuries. Five of the injured persons claimed compensation by filing applications before the Tribunal u/s 110A of the Motor Vehicles Act, 1939 (in short, the "Old Act"). The owner of the vehicle Narayan Chandra Sahoo (hereinafter referred to as the "owner") filed written statement taking the stand that the driver of the vehicle was not negligent, but the accident occurred while he was trying to save a cyclist. The insurer in its written statement specifically pleaded that the vehicle in question was being plied without any valid route permit. The permit granted by the Regional Transport Officer did not authorise carrying of passengers, and only authorised plying of the vehicle upto Amareswar Garage at Jajpur Road for repairs. The owner of the vehicle contravened the specific direction of the R.T.O.

and plied the vehicle for commercial purpose for hire and reward by carrying passengers. It was also pleaded that the vehicle Was declared off the road by the R.T.O. from 1.10.1985 to 31.12.1985, and the accident having occurred in between the aforesaid two dates, the insurer had no liability. The Tribunal on consideration of the claims observed that the liability was that of the insurer, and directed payment of awarded amount by the insurer.

3. In support of the appeals, the learned Counsel for the insurer has submitted that in terms of Section 96(2)(b) of the Old Act which corresponds to Section 149(2)(a) of the Motor Vehicles Act, 1988 (in short, the "new Act"), the Insurer has no liability if the vehicle was used for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle. Emphasis is made on Section 96(2)(b)(c) of old Act corresponding to Section 149(2)(2)(a)(i)(c) of the new Act in this context. The policy of insurance which is marked as Ext. A/I, according to the insurer, clearly indicates that there was prohibition on the use of the vehicle without a permit. Additionally it is submitted that the policy itself clearly showed that the liability was to the extent of Rs. 15,000/-. In the absence of any material to show that the insurer accepted liability beyond the stipulated amount of Rs. 15,000/-, the awards made by the Tribunal are erroneous. According to the claimants, the awards made by the Tribunal are irreversible.

4. In order to appreciate the rival contentions, it is necessary to refer to Section 2(20) of the Old Act, corresponding to Section 2(31) of new Act, which defines "permit" to mean a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under the Act authorising the use of a contract carriage or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle. Though wording of the new provision in the new Act is different, in substance, there is no material difference. A permit is a document issued by a Transport Authority authorising the use of a transport vehicle in a particular way. It is a document which enables an owner of a vehicle to ply it. The definition does not make any distinction between a permanent and a temporary permit. Section 96 of the Old Act, corresponding to Section 149 of the new Act, deals with duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. However, a protection is given to the insurer from such liability in case of breach of certain conditions. In order to avail that protection, the Insurance Company is required to show that there was a breach of a specified condition of the policy, and that particular condition related to a permit and the user of the vehicle for a purpose not allowed by the permit. Only when the Insurance Company satisfies the aforesaid ingredients, it can escape the liability. Ext. A/1 is a xerox copy of part of the policy. The original policy was not produced before the Tribunal. The learned Counsel for the insurer submitted that the insurer should be granted an opportunity to file the policy as additional evidence. Though acceptance of additional evidence is not impermissible, yet it would depend upon the circumstances in which the additional evidence is considered desirable to be accepted. It has to be shown as

to what prevented the Insurance Company to adduce that evidence at the original stage. No satisfactory explanation has been referred in the case at hand.

5. Sub-section (2) of Section 96 of the Old Act, corresponding to Section 149(2) of the new Act, sets out the grounds on which the insurer may defend the action, and raise a positive defence. The only significant change in Section 149(2) vis-a-vis Section 96(2) is that u/s 149(2) insurer cannot repudiate its liability on ground of cancellation of policy. The other grounds namely breach of one of the specified conditions of the policy which condition is one of those enumerated, and/or policy being void on account of nondisclosure of a material fact or a false representation of a fact are available to be raised as defence. When a defence is raised, the insurer is required to adduce material to substantiate it. It having failed to do so in the instant case, without any explanation as to the cause of failure, I do not accept the prayer for permission to adduce additional evidence. On the materials on record, the insurer has not established breach of specified condition of the policy relating to user of the vehicle not allowed by the permit. Adequate material in that regard is absent. In that view of the matter, the plea that there was breach of specified condition relating to user not allowed by the permit, cannot be accepted.

6. However, coming to the alternative plea, I find that Ext. A/1 clearly shows that there is statutory coverage of Rs. 50,000/-. Adequate material was required to be placed by the claimants that the Insurance Company undertook to pay any amount beyond Rs. 50,000/-. The Tribunal has not recorded any finding regarding extent of liability. Neither the claimant nor the insured made a positive assertion that the liability of the insurer is unlimited. Absence of any finding on the question of extent of liability vitiates the award. I feel that this aspect should be re-adjudicated by the Tribunal.

So far as the awards to the extent of Rs. 50,000/- in toto are concerned, the insurer is liable to pay it. If on re-adjudication it is found that the insurer is to pay any additional amount, the Tribunal shall specify that. It is open to the parties to lead further evidence before the Tribunal on the question of extent of liability only. It is baffling that the insurance companies do not produce their tariff rates before the Tribunals. That itself would obviate much of the difficulties encountered by the Tribunal and appellate Courts, while dealing with the question whether the insurer accepted any extra liability. Production of tariff rates would clinch the issue. The Tribunal would at a glance know the amount of indemnification. The Tribunals have also a duty in this regard. They have not to act as robots or tape-recorders to record evidence. They have a duty to make a just award as mandated u/s 110-B of the Old Act, corresponding to Section 168(1) of the new Act. The award has not only to be just, but also to appear to be just. Any fanciful award made without application of mind to the relevant aspects does not meet the mandates of Section 110-B (Section 168(1)). The Tribunal should in all cases if the insurer fails to produce tariff rates, direct it to do so. If insurer fails to produce it without plausible reasons, notwithstanding the

direction, adverse inference can be drawn. Such a direction is a positive step in the direction of making the award just. After tariff rates are produced, it is always open to the insured/claimant to show to the Tribunal the extent of liability, with reference to the rates.

7. The claimant would be entitled to receive Rs. 10,000/- each along with 6% interest from the date of application which the insurer should pay within two months from today. The balance, if any, payable by the insurer/owner shall be adjudicated by the Tribunal. The deposit made in this Court be transferred to the Tribunal, so that the insurer can deposit the balance amount in respect of the award of Rs. 50,000/- and interest thereon as indicated above.

The appeals are accordingly disposed of.