(2023) 05 OHC CK 0123

In the Orissa High Court

Case No : MACA No.115 Of 2011

New India Assurance Co. Ltd — APPELLANT

Vs

Monaka Sahoo And Others — RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Citation : (2023) 05 OHC CK 0123

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

Bench : Single Bench

Advocate : B. Dasmohapatra, S.B. Das, B.P. Tripathy

Final Decision : Allowed

Judgement

B.P. Routray, J

1. Present appeal by the insurer is directed against the judgment dated 18th October, 2010 passed by learned 2nd M.A.C.T., Cuttack in Misc. Case No.623 of 1996, wherein learned Tribunal has granted compensation to the tune of Rs.3,96,060/- along with interest @7% per annum from the date of filing of the claim application to the claimants on account of death of the deceased in a motor vehicular accident dated 5.6.1995.

2. Mr. B. Dasmohapatra, learned counsel for the Appellant-insurer submits that the deceased was pillion rider of the offending Scooter bearing Registration No.OIU-1068 driven by owner-Respondent No.4. He further submits that as per the principles decided in the case of Oriental Insurance Co. Ltd. vs. Sudhakaran K.V. & Ors., AIR 2008 SC 2729, the deceased is not covered within the risk coverage since the policy is 'Act only'.

3. Mr. S.B. Das, learned counsel on behalf of Mr. B.P. Tripathy, learned counsel for Respondents No.2 & 3 (claimants) urges that the status of policy as 'Act only' was not pleaded in the WS of the insurer before learned Tribunal and therefore, at this stage the same cannot be agitated.

4. It is seen that this Court by order dated 22.02.2023 has allowed the prayer of the Appellant to adduce the copy of insurance policy by way of additional evidence. The same was allowed upon hearing both parties and the copy of insurance policy was marked in evidence as 'Ext.A' on behalf of the insurance company. Admittedly, Ext.A is not disputed and has been marked without any objection. Therefore, the status of the policy, which is undisputedly 'Act only' as reflected on the face of Ext.A, remains admitted and as such, any objection against it for absence of pleading is overruled.

5. The Supreme Court in the case of Sudhakaran K.V. & Ors, (supra), while considering the question that whether an 'Act only' policy would cover the risk of the pillion rider of a scooter, proceeded to hold that such a contract of insurance covered the risk of a third party and not that of the owner or pillion rider of a two wheeler. The Supreme Court held as follows:

"The law which emerges from the said decisions, is : (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/ her risk; (ii)the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii)the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

6. In view of the law laid down by the Supreme Court, the appeal is allowed and the Appellant, i.e. New India Assurance Co. Ltd. is exempted from its liability. It is open for the claimants to realize the compensation amount from the owner.

7. The statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

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