
(1989) 02 OHC CK 0019

In the Orissa High Court

Case No : Miscellaneous Appeal No. 187 of 1986

New India Assurance Co. Ltd.

APPELLANT

Vs

Netrananda Kandi and Others

RESPONDENT

Date of Decision : 15-02-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1990) 1 ACC 640 : (1989) ACJ 994 : (1991) 71 CompCas 580

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : Deepak Misra, for the Appellant; S.K. Padhi, S.K. Ghosh, Y. Mohanty, S.K. Dey and D. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The insurer of the vehicle, ORX No. 5067, is the appellant in an appeal u/s 110D of the Motor Vehicles Act, 1939, challenging the award of the Motor Accidents Claims Tribunal. The claimant-respondent No. 1 was travelling in a trekker, bearing registration No. ORX 5417, and while the said trekker had reached near village, Dhirapur, another trekker, bearing registration No. ORX 5067, came from the opposite direction and grazed against the right side of the trekker which was carrying the claimant-respondent No. 1. Respondent No. 1 who was occupying a seat on the right side sustained serious injuries and the femur bones on both of his legs were fractured. He was taken to the hospital for treatment and, finally he was shifted to District Headquarters Hospital, Puri, where he remained as an indoor patient for three months. From Puri he was shifted for further treatment to clatpur. Notwithstanding the fact that all efforts were made, he was not fully cured. He then filed an application claiming compensation to the tune of Rs. 1,00,000 alleging that both the vehicles were being driven rashly and negligently. The owners of both the vehicles and the insurer were made parties.

2. The stand of the owners as well as the insurer is that the vehicle had not been

registered as a contract carriage or stage carriage and, therefore, no passenger could be carried in them on payment of charges. The insurer further took the stand that the vehicle had not been insured with it.

3. On these pleadings, the Tribunal framed four issues and, on issues Nos. 1 and 2, came to the conclusion that the accident was caused due to rash and negligent driving by the driver of the vehicle ORX 5067. On issues Nos. 3 and 4, he came to the conclusion that the claimant having travelled in another vehicle became a third party so far as the insured vehicle is concerned, namely, ORX 5067, and, therefore, the insurer cannot avoid liability. Though the insurer in its objection has stated that the vehicle had not been insured with it, after the owner of the vehicle disclosed the policy number with an affidavit, the insurer was called upon to produce the policy or to deny specifically that the vehicle had been insured with it. The insurer did not comply with the said direction. In that view of the matter, the Tribunal held that the plea of the insurer that the vehicle had not been insured with it cannot be accepted.

4. So far as the quantum of compensation is concerned, the learned Tribunal, on consideration of the entire material, determined the same at Rs. 60,000. It is this order of the Tribunal which is being assailed in this appeal.

5. An insurer, in law, is not entitled to challenge the quantum of compensation and, therefore, Mr. Misra appearing for the appellant does not challenge the quantum. He, however, raised two contentions with regard to the liability of the insurer. According to learned counsel, the policy of insurance not having been produced and since the insurer denied the fact that the vehicle had been insured with it, the Tribunal erred in law in coming to the conclusion that the vehicle had been insured with it. He further urges that the vehicle not being a stage carriage or contract carriage vehicle, no passenger could have travelled in the vehicle and, consequently, a passenger travelling in such a vehicle cannot claim compensation under the provisions of the Motor Vehicles Act. A close scrutiny rendered both the submissions devoid of any substance.

6. So far as the first submission of learned counsel for the appellant is concerned, no doubt the appellant in the written objection had taken the stand that the vehicle in question had not been insured with it. But, after the owner of the vehicle disclosed the policy number and filed an affidavit and further stated that the original policy had been lost, the Tribunal called upon the appellant to specifically state whether the vehicle in question had been insured or not and also to produce the policy. The said direction was not complied with by the appellant. In that view of the matter, the Tribunal rightly drew an adverse inference and accepting the affidavit of the owner came to the conclusion that the vehicle, ORX 5067, had been insured with the appellant. The conclusion of the Tribunal would, in the facts and circumstances, remain unassailable and the first contention of Mr. Misra is, accordingly, rejected.

7. So far as the second submission is concerned, Mr. Misra appearing for the

appellant relied upon a decision of the Bombay High Court in the case of Oriental Fire and General Insurance Co. Vs. Hirabai Vithal Nikam and Others, . I am really unable to understand how the aforesaid decision has any application to the present case. The finding of the Tribunal is that it is the vehicle, ORX 5067, which was being negligently driven and caused the accident. The claimant was not in that vehicle. Therefore, so far as the negligent vehicle is concerned, the claimant stands in the position of a third party. The insurer of the vehicle cannot be absolved of its liability towards a third party. Therefore, even if the vehicle in which the injured-respondent No. 1 was travelling was not a public vehicle and authorised to carry passengers, yet the liability of the offending vehicle and its insurer towards a third party cannot be obliterated. In the Bombay decision on which reliance has been placed, the person concerned was travelling in a vehicle which dashed against a tree, and, therefore, it was held that since the vehicle was only a public vehicle and was not authorised to carry passengers, the injured cannot claim any compensation under the provisions of the Motor Vehicles Act. That decision has absolutely no application to the facts and circumstances of the present case. The second contention of Mr. Misra is accordingly rejected.

8. No other submissions having been made, this appeal fails and is hereby dismissed but, in the circumstances, there would be no order as to costs.