
(1992) 12 OHC CK 0018
In the Orissa High Court
Case No : M.A. No. 308 of 1989

New India Assurance Co. Ltd.

APPELLANT

Vs

Rambha Dei and Others

RESPONDENT

Date of Decision : 14-12-1992

Acts Referred:

Motor Vehicles Act, 1988 — Section 105, 96, 96(2)(c)

Citation : (1994) ACJ 758

Hon'ble Judges : K.C. Jagadeb Roy, J

Bench : Single Bench

Advocate : M. Sinha, for the Appellant; S.N. Satpathy, I. Mohanty, Rajib Dass and L. Pradhan, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Jagadeb Roy, J.—This Misc. Appeal has been filed by the insurer appellant challenging the award made by the Second Motor Accidents Claims Tribunal, Cuttack, in Misc. Case No. 142 of 1985 granting a sum of Rs. 36,000/- excluding interest which will run at the rate of 12 per cent per annum from the date of claim till payment. It was indicated in the award that out of the said amount of compensation respondent No. 1, mother of the deceased, will be entitled to a sum of Rs. 16,000/- and the respondent No. 2, the widow of the deceased, will be entitled to the balance. There was also further direction that out of the said amount as far as the amount awarded to the mother is concerned a sum of Rs. 12,000/- and Rs. 15,000/- as far as the amount awarded to the widow of the deceased is concerned be kept in fixed deposit in a nationalised bank for a term of six years and that fixed deposits shall not be withdrawn or pledged. The amount of Rs. 36,000/- has already been deposited in the court along with the interest pursuant to the direction of the court and is lying in the judicial deposit.

2. The appellant, however, challenges this award made by the 2nd Motor Accidents Claims Tribunal only on the ground that it had no liability to pay any amount of compensation since the policy of the insurance, Exh. C, which was

taken out on 14.3.1985 and was valid up to 13.3.1986 was already cancelled by the insurance company and it was communicated by the letter dated 19.4.1985, Exh. E. Admittedly, the occurrence took place on 14.4.1985 and the deceased who was a mason doing colouring work of buildings, doors and windows succumbed to death by the accident leaving behind respondent No. 1, the mother and respondent No. 2, the widow.

3. Mr. Indrajit Mohanty, learned counsel appealing for the owner, however, challenges this assertion and argument of the learned counsel appealing for the insurance company on the ground that there was indeed a valid insurance policy at the time of accident. Exh. C, the insurance policy, continued to be valid in spite of notice of cancellation issued by the insurance company on 19.4.1985. The entire Misc. Appeal No. 308 of 1989 is only confined to the validity of the policy from which the liability of the insurance company flows. The claimants, however, have filed a cross-appeal claiming higher amount of compensation alleging that the learned Tribunal failed to consider the evidence on record relating to the quantum of contribution of the deceased to his family and relying only on the single statement of claimant No. 2, the widow of the deceased, that they were spending Rs. 7 per day towards maintenance of the entire family consisting of the claimants and the deceased. Tribunal accepting the total income of the deceased to be Rs. 250/- per month and accepting Rs. 150/- to be the contribution towards the family and applying 20 years" multiplier came to award a sum of Rs. 36,000/- as compensation in the case. Learned counsel appealing for the claimants, however, submits that the court can take judicial notice of income of such a mason at the relevant time, i.e., in the year 1985 and on the materials available on record regarding the income and contribution of the deceased towards the family should adequately increase the amount of compensation in the interest of justice.

4. It is admitted that the insurance company had issued a letter of cancellation to the owner of the vehicle on 19.4.1985 after 5 days of the accident which is filed as Exh. E and a copy of which was submitted to the R.T.O. The ground of cancellation is that a cheque for the premium of the policy had been issued by the owner of the vehicle to the insurance company, having been drawn on Indian Bank and on receipt of the said cheque, the policy of insurance was issued in favour of the owner of the vehicle insuring the vehicle for the period from 14.3.1985 to 13.3.1986. The policy was issued in original and was not subject to any confirmation in future. But since the company found that the cheque bounced and was not honoured by the bank, in exercise of its power u/s 96 of the Motor Vehicles Act, 1939, it issued a letter giving intimation to the owner that it had cancelled the policy of insurance and the motor vehicle authority (R.T.O.) was also intimated about the same which is required u/s 105 of the said Act. Before a policy of insurance is issued, the insurer is required to be satisfied that all requirements for issuance of the policy are satisfied. A vehicle is permitted to ply on the road only when it had a valid insurance policy to cover the liability and the token authorising the vehicle to run on the road which would

not be issued by the transport authorities in the absence of such policy. The moment a vehicle is on the street, it has the right to invite passengers to board the vehicle. When a passenger boards, he is impliedly assured that in the event of his injury or death, the compensation is to be paid by the insurance company within the limit of its liability. Section 105 of the Motor Vehicles Act also requires the insurance company to notify the registering authority regarding the cancellation or suspension of the policy so that it may take necessary action in not allowing the vehicle to ply on the road. In the present case the agent of the insurance company had issued the policy of insurance covering the vehicle as indicated. The insurance company could have waited to see if the cheque was honoured before issuing the policy. But without waiting for the same it had issued the policy. The policy already issued, therefore, cannot automatically become void because the cheque bounced. If the insurance company was cheated to issue such a policy, the company is not without remedy to meet its grievance, but it cannot be exempted from its liability under the policy.

5. Mr. Sinha, learned counsel appealing for the insurance company, drew my attention to Section 96(2)(c) of the Motor Vehicles Act. According to him, the owner of the vehicle while issuing the cheque to cover the policy had represented that he had sufficient money to cover the cheque drawn. According to Mr. Sinha, it was sufficient on the basis of which the policy was rightly issued. But as the representation ultimately turned out to be wrong, the policy needs to be declared void on that score and cannot be treated to be a valid one on the date of accident. I am not in a position to accept such a contention. The contract of insurance is a contract *uberrimae fidei*. In other words, a contract of utmost good faith and enjoins on the insured a duty to disclose all material facts to his knowledge to be known to the insurer before the insurer enters into contract with the insured. If the insured deliberately withholds such information or provides wrong information which, if would have been disclosed, would have persuaded the insurer to refuse insurance, the policy could be avoided at the instance of the insurer. Besides, a cheque for the premium of the policy if bounced may be a ground to cancel the policy but until its cancellation, it continues to be valid. I, therefore, hold that the policy continued to be valid on the date of accident as the letter intimating the cancellation of the policy was issued after 5 days of the accident and no material was placed before me to show that the insured had the knowledge prior to the accident that his cheque for the premium had bounced.

6. Coming to the cross-objection made by the claimants, it is not disputed that the deceased was 25 years of age when he met with the accident. It is also not disputed that he was a mason engaged for colouring the buildings, doors and windows. The claimants though had made a claim of Rs. 2,00,000/-, subsequently they confined the claim to a sum of Rs. 99,000/- in order to avoid higher court fee as stated by the learned counsel for the claimants. In the claim petition the monthly income of the deceased was shown to be Rs. 2,000/- per month. The widow of the deceased was examined as PW 1. Though in her examination-in-chief she stated that her husband was giving her Rs. 50/- to Rs.

60/- daily for running the house and was regularly engaged in work, in the cross-examination she stated that their daily expenses were coming to Rs. 7/- to Rs. 8/- and there was no surplus. The mother of the deceased was examined as PW 4. Her statement in her examination-in-chief is that her son (deceased) was earning Rs. 50/- to Rs. 60/- per day and according to her he died at the age of 26 years. She had no income of her own for her maintenance. According to her statement in cross-examination, the contribution of the deceased towards the family was Rs. 30/- per day and denied the suggestion and stated that it was not correct to say that his contribution was Rs. 10/- to Rs. 12/- per day to run the house. The other persons who were examined were working with him (the deceased) including the brother who was separated from him. PW 2 had stated that the deceased was working as a mason engaged in colouring work. PW 3 who is the elder brother of the deceased was working separately from him and had stated that their mother, the claimant No. 1, was living with the deceased brother. The deceased was a mason engaged in colouring work of doors and windows and he worked with him. Besides him, 5-6 more persons were also working under the deceased. The deceased was a petty contractor and was earning Rs. 60/- to Rs. 70/- per day. This statement, however, has not been demolished in his cross-examination. He categorically stated that it is not a fact that the daily income of his brother was Rs. 11/-. He stated that his brother studied up to Class VIII. The other witness, namely, PW 5 who was examined on behalf of the claimants had stated that the deceased was working as a mason under him. Though two witnesses were examined on behalf of the opposite parties, none has given any positive evidence as to the income of the deceased nor any evidence was laid challenging the statement made by the witnesses for the claimants that the income of the deceased was around Rs. 30/- per day. Taking into consideration all the evidence that has been laid on the point and assuming that he was just a mason for doing ordinary colouring work in the year 1985, his daily income would not have been less than Rs. 20/- and if I deduct 1/3rd of his income towards his personal expenditure, the contribution towards family which included him would come to Rs. 14/- per day and taking into account that out of this he was also taking tiffin and night meal, the net contribution towards the family would be Rs. 10/- per day and at this rate, his monthly contribution towards family comes to Rs. 300/-. The insurance company has not challenged 20 years' multiplier that was applied to the case of the deceased by the Tribunal. Since the whole amount is going to be given in lump sum, I apply 15 years' multiplier to the present case and calculated at that rate, the amount of compensation would be Rs. 54,000/-. This amount shall carry an interest of 12 per cent per annum from the date of the claim till payment.

While the Misc. Appeal No. 308 of 1989 is dismissed, the cross-appeal is allowed to the extent indicated above. Parties to bear the costs of their respective appeals.