(2002) 09 OHC CK 0059

In the Orissa High Court

Case No : M.A. No. 371/99

New India Assurance Co. Ltd. APPELLANT

Vs

S. Transport Pvt. Ltd. and Others RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2002) 2 OLR 710

Hon'ble Judges : P. Ray, J

Bench : Single Bench

Judgement

P. Ray, J.—The present appeal is directed against an interim award u/s 140 of the Motor Vehicles Act. The claimants have filed the claim case for a compensation of Rs. 3,00,000/- due to death of their mother in a motor vehicle accident.

2. While allowing an interim award the Tribunal found that the deceased was killed in the accident involving the offending vehicle and that the offending vehicle was covered by a valid insurance policy. On behalf of the Insurance Company it has been contended that the driver of the offending tipper had no valid driving licence and, as such, the Insurance Company is not liable even to pay the interim compensation. The Tribunal however did not consider said question regarding validity of the driving licence on the view that the interim award is to be made on the basis of ''No fault liability'' and the question relating to validity of the driving licence need not be considered at the stage of passing an interim award u/s 140 of the M.V. Act.

The aforesaid view is not correct. Concept of ''No fault liability'' cannot be applied in case of ''interim award''. Concept of ''No fault liability'' comes into play when the claimant does not claim more than the amount fixed u/s 140 of the Motor Vehicles Act. Interim award is an interim relief pending the main claim case. Court should be prima facie satisfied about the basic facts required for fastening liability. The Tribunal is also to find out prima facie whether the driver had a valid driving licence. But in view of the judgment of the Supreme Court in New India

Assurance Co., Shimla Vs. Kamla and Others etc. etc., it is the Insurance Company which is initially liable to satisfy the award of compensation in favour of a third party, even if the driver has no valid driving licence, subject to its right to recover the said amount from the owner of the vehicle. In the present case, the deceased was a third party. Accordingly, the interim award against the Insurance Company does not deserve any interference. It is well settled that the interim award is subject to the final award in the main claim case and the Insurance Company is entitled to get reimbursement from the owner if it is established that the Insurance is not liable to indemnify the owner.

3. For the foregoing reasons, the present appeal is disposed of with the following directions :

(i) The appellant-Insurance Company will deposit the interim award in the Tribunal by 31st of October. 2002 without prejudice to its right and contentions in the main claim case;

(ii) In the main claim case, the Insurance Company is entitled to raise all questions available in law to show that the Insurance cannot be held liable to pay any compensation;

(iii) In case, it is found that the owner is liable to pay the compensation, the Tribunal will direct the owner to reimburse the amount paid by the Insurance Company to satisfy the interim award.

(iv) The Certificate Case No. 88/2001 pending before the Certificate Officer, Cuttack, will remain stayed till 6th of November, 2002.

(v) The Insurance Company is permitted to take back the amount deposited in this Court along with the interest accrued thereon.

