
(1990) 11 OHC CK 0009
In the Orissa High Court
Case No : M.A. No. 499 of 1989

New India Assurance Co. Ltd.

APPELLANT

Vs

Saraswati Jena and Others

RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 95, 96

Citation : (1992) ACJ 885

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : S.D. Das, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Insurer is the appellant u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") against an award u/s 110-B thereof.

2. When the question of dispute in respect of the appearance of two sets of Advocates for the claimants was listed for orders, without going into that question, with consent of parties, I heard the appeal on merits allowing both the sets to advance their arguments since any delay in disposal of the appeal would be detrimental to the claimant who has lost her husband and has become a destitute widow on account of the accident.

3. On 9.9.1984, at about 7.30 a.m. while deceased was going towards Balasore from village Korkora on a cycle on National Highway No. 5 keeping to his left, a bus bearing registration No. ORU 6199 dashed against the deceased who fell down and sustained head injuries and while being treated in the S.C.B. Medical College Hospital, he succumbed,

4. Owner of the vehicle remained ex parte. Insurer who contested claim disowned the insurance and its liability.

5. In the course of enquiry, claimants examined two witnesses and exhibited the

horoscope to prove age of the deceased, seizure list, inquest report, post-mortem report and the insurance certificate. Insurer produced two documents whereunder a cheque issued by the owner towards premium was dishonoured which was returned to the owner.

6. On appreciation of evidence Tribunal found that the vehicle was being driven negligently and claimant is entitled to compensation of Rs. 62,600/-. It, however, confined liability of the insurer at Rs. 50,000/-and directed the balance Rs. 12,600/- to be paid by the owner.

7. Claimant has filed a cross-objection for enhancement of the amount awarded. Since the insurer has been made liable for the maximum limit, in appeal by the insurer, cross-objection by claimant for amount beyond that amount is not maintainable.

8. Mr. S.D. Das, learned counsel for the insurer, strenuously contended that insurance having been cancelled on account of nonpayment of premium by the owner there was no valid insurance to cover the risk on behalf of the owner. He relied upon a decision of Delhi High Court in Chandan and Another Vs. Kanwarlal and Another, where although a cover note was issued, there was no policy on account of dishonour of the cheque and Tribunal did not make the insurer liable which was affirmed by the High Court. It was observed:

(4) The Tribunal found that the owner of the truck was issued a cover note No. 4212 for insurance for the period between 27.3.1967 and 26.3.1968. The owner had issued a cheque for the premium but the same was dishonoured. In other words, there was no policy covering the owner of the truck at the relevant time. The Tribunal was right in excluding the respondent insurance company from any liability. The liability is, therefore, of the owner and the driver jointly and severally.

Delhi High Court has not taken into consideration Section 96(1) of the Act which reads as follows:

96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.?(1) If, after a certificate of insurance has been issued under Sub-section (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Under Section 95(4) a policy is of no effect until a certificate of insurance is issued. Under Sub-section (4-A) it is the duty of the insurer to intimate the registering authority where a cover note issued by the insurer is not followed by a policy. There is no material in this case to come to a conclusion that the policy had no effect on the date of accident. In similar circumstances, this court in the decision reported in *New India Assurance Company Ltd. Vs. Prafulla Kumar Das and Others*, , relying upon Section 96(1) of the Act held that insurer is liable to pay the compensation as per Section 95:

...The provision under the Motor Vehicles Act making the insurance company liable is a beneficial one purposely engrafted into the statute for providing an efficacious remedy to the claimant so that an award passed by the Tribunal can easily be satisfied. But at the same time, if the insured does not pay the premium for which the policy could be or has been cancelled and yet the insurer is being made liable to pay the compensation, certainly the insurer will have the liberty to take such legal action as against the insured for realising the amount in question. It cannot be said that the insurer is without any remedy. It would be open for the insurer to take such legal action for the remedy in question as available to it under law.

In view of this binding decision of this court, when insurer has a legal remedy to recover the amount from the owner, I am not inclined to accept the contention of Mr. S.D. Das, learned counsel for the insurer.

9. Insurer shall deposit the amount with interest at the rate of 8 per cent from the date of application till deposit within two months failing which interest at the rate of 12 per cent annually till realisation shall be paid in place of 8 per cent. On deposit, the Tribunal shall make arrangement for investing Rs. 40,000/- out of the amount deposited in name of the claimant in any nationalised bank, rural bank or post office, near the village of the claimant from which she will be able to get interest quarterly. In case any amount from out of the security is applied to be released, Tribunal shall consider after three years of the deposit to release portion of the amount being satisfied about the urgency of necessity.

10. Tribunal shall intimate the Legal Aid and Advice Board to assist the claimant for recovery of the portion of award from the owner at an early date.

11. In the result, appeal and cross-objection are dismissed subject to observations. There shall be no order as to costs.