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(2007) 09 OHC CK 0026

In the Orissa High Court

New India Assurance Co. Ltd. — APPELLANT

Vs

Seria Ping, Satyanarayana Ping and Shree Balaji Transport — RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 149

Citation : (2008) 105 CLT 319 : (2008) 1 OLR 283 Supp

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N. Prusty, J.—As prayed for by Learned Counsel for the Petitioner, he is permitted to remove the defect in Court today.

2. In this case, the accident was caused on 26.12.1994, the claim application was filed in the year 1997 and an award was passed on 12.07.1998 on the basis of the compromise in Lok Adalat. The present Petitioner filed an application on 10.09.1998 challenging the award dated 12.07.1998 which was passed on the basis of a compromise in the Lok Adalat and by order No. 16 dated 30.03.1999, the said application as rejected by the Learned District Judge-cum-M.A.C.T.-I, Sambalpur. Challenging the Order Dated 30.03.1999, the Petitioner has filed this Writ Petition on 13.05.1999. Even though in the meantime more than eight years have passed, till date no notice has been issued to the Opposite Parties and if after such long lapse of time, at this stage notice is issued to the Opposite Parties, the same will cause further delay in disposal of the case and thereby the parties shall be more prejudiced. Since the main round for challenging the award is that the Insurance Company is not liable to pay the compensation amount to the claimants indemnifying the owner of the vehicle, as because the driver of the offending vehicle was not having a valid driving licence at the time the accident was caused, this Writ Petition can be disposed of at this stage on the basis of settled principles of law and thereby none of the parties shall be prejudiced by the order. Hence this Writ Petition is taken up for final disposal at the stage of

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admission.

3. The Petitioner, who was the opposite party No. 2 in M.A.C.Case No. 272/97 in the file of the Learned District Judge-cum-M.A.C.T.-I, Sambalpur, has filed this Writ Petition challenging the Order Dated 30.03.1999 passed in the said case in rejecting its application filed by the Petitioner inter alia alleging therein that the case cannot be disposed of in terms of the compromise since on verification of the driving licence record, the Insurance Company found that the driving licence record is not available at the R.T.O.Office, Sambalpur.

Heard Mr. S.S.Rao, Learned Counsel for the Petitioner.

4. As it appears, in an accident caused due to rash and negligent driving of the driver of the offending vehicle bearing Registration No. OR-15A/2995 (Tipper) and one Indra Ping died in the said accident. The legal heirs of the deceased (opposite party Nos. 1 and 2) filed an application claiming Rs. 2,00,000/- The matter was taken up and settled in Lok Adalat for Rs. 95,000/- as compensation in favour of the claimants and on failure of payment of the awarded amount within two months from the date of passing of the award interest will run @ 12% per annum from the date of the application till the date of payment, subject to confirmation of the Driving License by the insurer and some other conditions which are not relevant for the purpose of this case and accordingly an award was passed on the basis of the terms of the said compromise. It is alleged that the Petitioner-Insurance Company took all required steps for verification of the Driving License and found that the driving Licence record is not available at the R.T.O.office at Sambalpur for verification. After taking all required steps as per conditions of the compromise, the Petitioner filed an application for stating therein that the case cannot be compromised, since the driving licence of the driver could not be verified. The Petitioner''s case is not that the driver of the vehicle was not having a valid driving licence to drive the tipper nor the Driving Licence was a fake one, for which the compensation amount cannot be paid by it.

5. Considering the submissions made by Learned Counsel for the respective parties, Learned Tribunal was not inclined to entertain such application filed to the effect that the case cannot be compromised on the ground put forth by he Insurance Company in support of its contention. Learned Tribunal rejected the contention of the Insurance Company on the ground that the Petitioner cannot put the blame on the claimants for its own negligence. Learned Tribunal has also observed that no condition has been imposed for verification of the driving licence of the driver. It is not open for opposite party No. 2 (Petitioner) to challenge the compromise made by it. Even if such condition is there, it is the duty of the Insurance Company to verify/investigate for placing the material before the Court that the driver of the offending vehicle had no valid driving licence to drive a Tipper, for the purpose of absolving its liability to pay the amount of compensation. Nothing in this regard has been done by opposite party No. 2/Petitioner-Insurance Company. So it cannot put the blame on the applicant. Finally, the Tribunal directed opposite party No. 2 to satisfy the award

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immediately, i.e. to pay the awarded amount of Rs. 95,000/- with interest @ 12 % per annum from the date of the order i.e. 12.07.1998 till the date of realization of the amount.

6. The case record clearly indicates, the alleged accident in the instant case occurred on 26.12.1994 and the matter was compromised in LokAdalat on 12.07.1998 and award for Rs. 95.000/- in terms of the compromise was passed. Even though in the meantime more than thirteen years have passed from the date of accident and more than nine years from the date of award, the poor claimants have not received anything towards compensation. The plea of the Insurance Company, as has been urged by the Learned Counsel for the Petitioner, that the Petitioner is not liable to pay the compensation amount if the driver of the offending vehicle did not possess a valid driving licence, is no more remains a matter to be decided. Not possessing a valid driving licence may be a breach of policy condition as contained in the Insurance Policy, but then, for that the claimants should not suffer. In consonance with the Motor Vehicles Act it is the liability of the Insurance Company to pay the compensation amount, if there is a policy. The Supreme Court in the case of New India Assurance Company, Shimla v. Kamla and Ors. reported in 2001 S.C. 1419 and other similar matters has categorically held that not possessing a valid driving licence being violation of the policy condition, it would be open to the Insurance Company to realize the amount paid by it to the claimant from the owner of the vehicle. The Supreme Court has also held that on the said ground of violation of the policy condition that the driver was not having a valid driving licence, payment of compensation the poor claimant should not be deferred. In view of the settled principles of law, the claimants cannot be denied of their legitimate compensation on the ground of non-production of the driving licence by the Petitioner since as per the terms of the compromise it is only the Insurance Company who was to verify and/or produce the diving licence. Even if the driving licence is found not to be a genuine/an effective one, then also, the Insurance Company/Petitioner is to indemnify the owner of the vehicle, if there is a valid insurance policy. In the instant case, it is not the case of the Petitioner that there was no valid/effective policy in respect of the offending vehicle which caused the accident.

7. Further more, as per the settled principles of law, keeping in view the decision of the Supreme Court vis-a-vis Section 149(4) of the Motor Vehicles Act, the Insurance Company is liable/bound to pay the amount of compensation along with interest @ 12 % per annum in terms of the compromise, since the settled amount of Rs. 95,000/- has not been paid within two months from the date of compromise/award and after the entire amount of compensation is deposited along with up-to-date accrued interest before the Tribunal as directed by the Tribunal, the Petitioner/Insurance Company shall have the right to proceed against the owner of the offending vehigle for realization/recovery of the entire amount paid/deposited by it in accordance with law, if the driver of the said vehicle was not possessing a valid driving licence to drive the offending vehicle on the date and time the accident was caused as well as shall have all have the

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liberty to attach the the vehicle if the owner/insured does not participate in the proceeding and comply with the order passed by the Court/tribunal in the proceeding for recovery. 8. As indicated above, in terms of the compromise, on the basis of which award dated 12.07.1998 was passed, the Insurance Company was/is liable to pay interest @ 12 % per annum from the date of application till realization, if the awarded amount was/is not paid within two months from the date of passing of the award. In this case as per the impugned Order Dated 30-03-1999, while disposing of an application filed by the present Petitioner/ Insurance Company, the Tribunal has the Petitioner to pay interest @ 12 % per annum from the date of award/order i.e. 12.07.1998 till realization. As such the Tribunal has modified its earlier award/Order Dated 12.07.1998 which was passed in terms of the compromise, by replacing the same by a new order/award dated 30.03.1999. In my considered view the. Tribunal cannot modify/alter its own initial award passed in terms of the compromise, by replacing or altering the same by a new order/award.

9. Accordingly the Petitioner/Insurance Company is directed to deposit the entire awarded amount of Rs. 95,000/- along with interest @ 12 % per annum from the date of filing of the claim petition till the date of actual deposit before the Tribunal, within four months hence and immediately after such deposit, the amount shall be disbursed in favour of the claimants as would be determined by the Tribunal as per the the terms of the compromise. So far as the interest part is concerned, out of the total amount, 75% of the interest amount shall be invested in fixed deposit for a term of five years and balance amount shall be released in favour of the respective claimants proportionately as would be determined by the Tribunal.

10. Considering the submissions made by the Learned Counsel for the Petitioner and after going through the contents of the Writ Petition, I do not find any illegality, irregularity or manifest error of law in the impugned order and as such, I am not inclined to entertain the Writ Petition.

The Writ Petition is accordingly dismissed.

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