

(1989) 07 OHC CK 0003
In the Orissa High Court

New India Assurance Company Ltd.

APPELLANT

Vs

Prafulla Kumar Das and Others

RESPONDENT

Date of Decision : 21-07-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 96

Citation : (1989) 2 ACC 311 : (1989) 68 CLT 15

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

Bench : Single Bench

Judgement

G.B. Patnaik, J.—The insurer is the appellant assailing the order of the tribunal. In an application filed u/s 110-A of the Motor Vehicles Act by the claimants, the learned tribunal has directed payment of compensation to the tune of Rs. 15,000/- together with the consolidated cost of Rs. 500/-. The application had been filed making an allegation that the vehicle in question having been driven rashly and negligently, caused the accident. The present appellant insurer had insured the vehicle in question. Before the tribunal on behalf of the appellant objection had been taken to the effect that the insured namely the owner of the vehicle not having paid the premium in time the insurance policy had been cancelled and such a cancellation had also been notified to the owner of the vehicle, and therefore, no liability can be fastened on the insurer. This issue was fought vehemently before the tribunal and some evidence had also been led before the tribunal. The tribunal, however, did not consider it appropriate to go deep into the matter in view of the position of law. In view of the provisions contained in Section 96 of the Motor Vehicles Act, notwithstanding the cancellation of the policy in question, the insurer remains liable, the tribunal has directed the present appellant to pay the compensation in question. Obviously the aforesaid provision has been engrafted in the statute so that a third party claimant may not suffer.

2. Mr. Roy the learned Counsel for the Insurance Company, however, seriously contends that unless serious notice is taken to note of these factors, the

Insurance Company will suffer, inasmuch as though there would not be a valid insurance policy on the date of accident, yet the Insurance Company would be made liable for payment of the compensation in question. This is a matter, which can hardly be remedied by any court in view of the specific provision in the statute in no uncertain terms. The statute had made the Insurance Company liable to pay the amount irrespective of the fact whether the policy once granted has been cancelled in the meantime. The use of the expression "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..." in Section 96(1) of the Act unequivocally declares that even if the policy had been cancelled, yet the Insurer is liable to pay the compensation in question, as if it were the judgment-debtor. This being the position in law, the Tribunal was fully justified in directing the appellant to pay the compensation awarded in favour of the claimant. Mr. Roy for the Insurer contends that unless Courts protect the Insurer as against the fraudulent action of the Insurer, the Insurer which is an institution in public sector will suffer irreparable loss. I am afraid; this is a matter for consideration of the lawmakers. The Court has the solemn duty only to interpret the law and not to make any new law. I also do not agree with the submission of Mr. Roy for the appellant that the Insurer has no remedy. 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 Insurer 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 my view, the present appeal is devoid of merits and is accordingly dismissed, but without any orders as to costs.