
(1998) 03 PAT CK 0002
In the Patna High Court
Case No : A.F.O.O. No. 395 of 1993 (R)

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Anthony Kujur and Others

RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Citation : (1999) ACJ 1597 : (1998) 1 PLJR 910

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : D.N. Chatterjee, for the Appellant; B.B. Sinha and S.U. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal is directed against the judgment and award dated 26.8.1992 passed by the Motor Accidents Claims Tribunal, Ranchi in Compensation Case No. 92 of 1989 awarding a sum of Rs. 66,000 as compensation on account of death of the deceased in a motor vehicle accident.

2. The claimant-respondent filed an application for the grant of compensation stating, inter alia, that the deceased was travelling in a Matador bearing registration No. BEN 9963 which was coming from Ranchi to Mandar on the alleged date of accident. The driver driving the vehicle lost its control and dashed against a tree causing serious injuries to the passengers including the claimant and his wife and daughter. Because of the said injury the wife of the claimant ultimately died. The claim was contested by the appellant by filing the written statement taking various defences including the limit of its liability, the learned Tribunal after considering the facts and evidence assessed the compensation at Rs. 66,000. The Tribunal also considered the copy of the policy filed by the appellant and came to the conclusion that the entire liability is of the insurance company for payment of the said compensation.

3. Mr. D.N. Chatterjee, learned Counsel appearing for the appellant assailed the

impugned judgment and award as being illegal and contrary to the evidence brought on record. The learned Counsel submitted that the liability of the appellant insurance company is limited inasmuch as the vehicle was a passenger carrying vehicle and under the Act the insurance company has liability only to the extent of Rs. 15,000 only.

4. The matter was heard in part on 6.3.1998. During the course of argument Mr. Chatterjee referred the policy marked Exh. A. I have the occasion to see another copy of the policy which was kept by Mr. D.N. Chatterjee for his use. From perusal of these two policies I found some discrepancy in the Schedule portion of these policies. Accordingly, Divisional Manager was directed to produce the register and the copy of the policy which was prepared along with the original in the same process. Today the Divisional Manager produced before me two registers maintained in the office of the company. It is stated that initially policy was issued in the name of one A. Kumar who was the original owner of the vehicle. Subsequently, because of transfer of ownership of the vehicle in favour of the respondent No. 2 Ram Avtar Khandelwal a new policy had been issued. When I enquired about the discrepancy in the copies of the policies the Divisional Manager and also Mr. Chatterjee, learned Counsel appearing for the appellant admitted that some mistakes have been committed by the officers of the company in filling up the Schedule portion of the policy. From perusal of the register it appears that in the column of liability to the passenger it is written "13 plus 2". The Divisional Manager further admitted that five copies of policy are prepared and one copy is kept by the issuing authority and another copy is sent to the Divisional Office. However, the original copy of the policy which was prepared by the same process has not been produced before me today. Evidently the copy of the policy which was filed before the Tribunal is not the exact copy of the policy. It also does not appear from the evidence that any of the witnesses has proved the policy. There is also no endorsement in the policy that it was marked Exh. A under the signature and seal of the Tribunal. I fail to understand how the Tribunal had referred the policy as Exh. A. As stated above, there is a discrepancy in the two policies, one filed before the Tribunal and another produced before me by Mr. Chat-terjee. In that view of the matter, I am of the opinion that no reliance can be placed on the said policy. Since the appellant insurance company failed to produce and prove the copy of the original policy prepared in the same process or authenticated copy of the policy, it is estopped and precluded from raising the defence that its liability is limited. It is well settled that if the insurance company fails to produce and prove the policy then the entire compensation shall be payable by the insurance company.

5. Mr. D.N. Chatterjee submitted that the discrepancy in the two policies has occasioned only because of the mistake committed by the officers of the company. In my opinion, it is a serious lapse on the part of the officers of the company particularly that officer who issued the copy of the policy in the year 1988. Having regard to the facts and circumstances of the case, the submissions made by Mr. Chatterjee that the liability of the insurance company is limited

cannot be accepted. On this sole ground alone, this appeal is liable to be dismissed.

6. In the result, there is no merit in this appeal which is, accordingly, dismissed.