

(2007) 09 OHC CK 0025
In the Orissa High Court

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Priyabala Roy and Others

RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166

Citation : (2008) 105 CLT 870 : (2008) 1 OLR 478

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Judgement

N. Prusty, J.—Even though the matter is listed for admission/hearing under Order XLI Rule 11 CPC, learned counsel for both the parties submit that the same can be disposed of at this stage, since the main grounds of challenge in this appeal are with regard to the liability of the Insurance Company to pay the awarded amount indemnifying the owner of the vehicle, even if the driver of the vehicle was not having a valid Driving Licence at the time of the accident, which is violative of the terms and conditions of policy and the deceased was travelling in the offending vehicle as a gratuitous passenger as well as the quantum of compensation and rate of interest awarded are on the higher side.

2. This appeal has been filed by Respondent No. 3/Insurance Company challenging the award dated 14.12.2000 passed by the learned Additional District Judge-cum-MACT, Nawarangpur in Misc. Judicial Case No. 88/2000 (M.J.C. No. 22 of 97 of D.J.), which was filed u/s 166 of the M.V. Act.

3. The case of the claimant, who is wife of deceased Rajeswar Roy is that on 4.3.1996 while the deceased was travelling in the offending vehicle (Jeep) bearing Registration No. ORC 3248 to Karagaon to finalise the marriage of his daughter, due to rash and negligence of the driver, the vehicle met with an accident near Kumuli and the deceased along with others sustained injuries. The deceased was taken to Raighar P.H.C. where he succumbed to the injuries. The deceased was carrying on business of grocery articles and was also a cultivator. His monthly income was Rs. 3,500/-. The untimely death has exposed the family

to great suffering and misery, for which the petitioner has claimed a compensation of Rs. 1,60,000/-. The vehicle was validly insured with the New India Assurance Company/Respondent No. 3, covering the date of accident.

4. The respondent Nos. 1 and 2 did not choose to appear and file their written statement and hence were set ex parte. The Respondent No. 3/appellant filed its written statement denying all the allegations, inter alia stating therein that the owner of the vehicle did not inform with regard to the accident, the driver of the vehicle was not having a valid driving licence, accident occurred due to fault of the driver and the deceased was travelling in the Jeep as a gratuitous passenger and hence the Insurance Company is not liable to pay the compensation amount indemnifying the owner of the vehicle, since the owner of the vehicle violated the terms and conditions of the policy.

5. In support of her contention the claimant/petitioner has examined two witnesses and exhibited certain documents (Ext. 1 to Ext. 7). No witness was examined on behalf of the appellant/Respondent No. 3 in support of its stand but to had filed certified copy of insurance policy bearing No. 345402/2303/31/219/1996 (Ext. A-3) to the effect that the vehicle was validly insured.

6. After assessment of the materials available on record as well as evidence adduced on behalf of the petitioner, the Tribunal arrived at a conclusion that the deceased was earning Rs. 18,000/- per annum in total and his contribution to the family was 2/3rd of his income i.e. to the tune of Rs. 12,000/- per annum, i.e. after deduction of 1/3rd of the income towards his personal expenses. By applying multiplier 13, the learned Tribunal finally came to the conclusion that the claimant is entitled for Rs. 1,56,000/- towards compensation and Rs. 4,000/- for untimely death of the deceased, mental shock, consortium, care and service as well as funeral expenses. As such the learned Tribunal has awarded Rs. 1,60,000/- in total as compensation in favour of the petitioner and cost of Rs. 200/- along with interest " 9% per annum from the date of filing of the claim petition i.e. 31.1.1997 till the date of realization and directed to pay the amount within 30 days, failing which interest shall run at the rate of 12% per annum thereafter, till realization.

7. The appellant-Insurance Company has challenged the award mainly on the grounds that the deceased was a gratuitous passenger in a private vehicle, which was insured as a private car and the driver of the vehicle was not having a valid driving licence to drive a private car. The Driver was having only a learner's licence. As such the owner of the vehicle had violated the terms and condition of the policy and in that view of the matter, the insurer has no liability to indemnify the owner of the vehicle and pay compensation to the claimants. It has also been averred by the appellant that application of multiplier 13 for assessment of the compensation amount is at a higher side, keeping in view the age of the deceased and as such the Insurance Company has also challenged the quantum of compensation/award passed by the learned Tribunal as the same is at a much

higher side.

8. Heard Mr. Sinha, learned counsel for the appellant/Insurance Company, Mr. S.K. Mund, learned counsel for the claimant/Respondent No. 1.

9. Considering the submissions made by the learned counsel for the respective parties and after going through the records of the case as well as the award passed by the learned Tribunal, as it appears, learned Tribunal has assessed the income of the deceased at Rs. 18,000/- per annum and after deducting 1 /3rd of the total income towards his personal expenses determined the monthly contribution to the family at Rs. 12,000/- per annum, which is 2/3rd of his total income. Keeping in view the age of the claimants the Tribunal has applied multiplier 13, for the purpose of assessment of compensation, as provided in the Statute. The Tribunal has also assessed Rs. 4,000/-towards untimely death of the deceased, mental shock, consortium, care and service as well as funeral expenses, which is on the much lower side. In view of the above, I am not inclined to interfere with the award of Rs. 1,60,000/- passed by the learned Tribunal in favour of the claimant/respondent No. 1. So far as the interest part on the awarded amount is concerned, keeping in view the facts and circumstances of the case, interest " 9% per annum shall be just and proper.

10. Mr. Sinha, learned counsel for the appellant submits that the main ground of challenge of the appellant in this appeal is with regard to its liability for payment of the awarded amount of compensation, indemnifying the owner of the vehicle. It is submitted by him that the deceased was travelling in the Jeep as a gratuitous passenger and the driver of the Jeep was not having a valid/effective driving licence to drive a passenger-carrying vehicle at the time of accident. As such, a bare perusal of the Insurance Policy (Ext. A/3) clearly indicates that the owner of the vehicle has violated the terms and conditions of the policy and hence the insurer has no liability to indemnify the owner of the vehicle and pay amount of compensation to the claimant/respondent No. 1.

11. As it appears under the new Act, an Insurance Policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident, which occurred or would occur after the new Act came into force as has been held in the case of New India Assurance Company Vs. Shri Satpal Singh and Others,

12. I have heard learned counsel for the parties at length. Perused the materials on record. It has been held by the Apex Court in catena of decisions including the decision reported in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., as well as in the case of United India Insurance Company Limited Vs. R. Venkatesan and Dakshinamoorthy, that even if the driver of the offending vehicle was not possessing a valid driving licence and allowed the passengers to travel in a goods carrying vehicle, which is a breach of policy condition, the poor

claimants should not suffer for such breach of policy condition if any. It is incumbent upon the insurer to pay the compensation amount first to the claimant and later on realize the same from the owner of the vehicle. Accordingly the appellant-Insurance Company ought to be directed to pay the compensation with liberty to realize the same from the owner of the offending vehicle in accordance with law. It has also been held by the Supreme Court that in case the owner of the vehicle does not participate in the proceeding for recovery, initiated by Insurance Company or does not comply with the order (s) passed in the said proceeding, the Insurance Company shall be at liberty to move the Court for attachment of the vehicle.

13. Considering the submissions made by learned counsel for both the parties and after going through the contents of the impugned order in detail, it is directed that the appellant-Insurance Company shall pay the compensation of Rs. 1,60,000/- along with interest " 9% per annum from the date of filing of the application i.e. 31.1.1997 till the date of realization, which shall be made within a period of four months hence.

14. Out of the total amount deposited, 30% of such total deposit made, shall be disbursed in favour of the claimant and the balance of 70% of the amount shall be invested in an unencumberable fixed deposit for a term of six years in the name of the claimant and no loan of any kind shall be sanctioned/dispensed in her favour by the concerned Bank during the entire period for which the money is kept in the fixed deposit.

15. In view of the ratio of the decision of the Apex Court vis-a-vis Section 149(4) of the Motor Vehicles Act, it is further directed that the Insurance Company after payment/deposit of the entire amount of compensation, if so advised, shall be at liberty to proceed against the owner of the vehicle for recovery/realization of the amount deposit/ paid by it towards satisfaction of the impugned award, in accordance with law, for violation of the terms and conditions of the policy by the owner of the vehicle/insured, if any. The Insurance Company shall also be at liberty to move the Court for attachment of the vehicle if the owner/insured does not participate in the proceeding and comply with the order passed by the Court/ Tribunal in the said proceeding for recovery of the amount, which has been paid/ deposited by the Insurance Company towards satisfaction of the award. It is made clear that in case any proceeding is initiated against the owner of the vehicle by the Insurance Company for recovery of the amount paid by it, the same shall be decided on its own merit in accordance with law, on the basis of the materials available on record/evidence adduced by the respective parties in that proceeding.

16. After the entire amount is deposited along with up-to-date accrued interest before the Tribunal as directed above, the appellant/Insurance Company shall be at liberty to withdraw the amount of deposit made by it in this Court along with up-to-date accrued interest on proper application.

17. The Misc. Appeal is accordingly disposed of.

18. Urgent certified copy of this order be granted on proper application.