(2008) 05 OHC CK 0005

In the Orissa High Court

Case No : M.A.C.A. No. 551 of 2004

Oriental Insurance Company Ltd. APPELLANT

Vs

Abhiram Sarangi and Another RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2008) CLT 1095 (Suppl Crl)

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Advocate : A.K. Rath, for the Appellant; D. Bhuyan, A.K. Tripathy, P.K. Nayak, A. Nayak and N.C. Behera, for the Respondent

Judgement

B.N. Mahapatra, J.—This appeal has been filed u/s 173 of M.V. Act, 1988 against the award dated 17th July, 2003 passed in Misc. Case No. 1 of 1993 by the Second M.A.C.T., Cuttack (for short, the ''Tribunal'').

2. The facts of case before the Learned Tribunal was that on 2.1.1993 at about 5 P.M. at Nemal while the claimant? Petitioner was going by his bi-cycle from Narua to Nemal, the tyre of front right wheel of the offending truck bearing registration No. ORJ-3952 coming from the opposite side in rash and negligent manner burst and iron portion of the wheel dashed against the claimant-Petitioner resulting fracture of mandible and right knee joint with other injuries on his person. The claimant-Petitioner underwent treatment in S.C.B. Medical College & Hospital, Cuttack and incurred expenditure of Rs. 15,000/- approximately for treatment. The further case of the claimant before the Learned Tribunal was that the monthly income of the claimant as a teacher was Rs. 2,200/- and the offending vehicle was owned by Opposite Party No. 1 and insured with Opposite Party No. 2-Oriental Insurance Company Ltd. vide policy No. 31/93/00093/11 valid from 9.4.1992 to 8.4.1993. Opposite Party No. 1-owner of the vehicle was set ex parte vide - Order Dated 6.1.1994. Opposite Party No. 2 in its written statement challenged the claim petition in its entirety. On the above pleadings, Learned

Tribunal framed four issues. The claimant examined two witnesses and produced eight documents which are exhibited as Exts.1 to 8. Opposite Party No. 2-Insurance Company did not examine any witness and also did not produce any document.

3. Learned Tribunal after considering both oral and documentary evidence came to the conclusion that due to rash and negligent driving of the driver of the offending truck the claimant-Petitioner sustained injuries. On the basis of the Insurance Policy of the offending vehicle, Learned Tribunal held that Opposite Party No. 2, as insurer of the offending vehicle, has liability to compensate the claim of the Petitioner. Learned Tribunal assessed the compensation amount at Rs. 15,000/? relying on some judicial pronouncement cited by the claimant? Petitioner. Learned Tribunal further allowed Rs. 100/- towards consolidated cost and directed the Insurance Company to make the payment within a period of thirty days from the date of the awarded with 6 per cent interest per annum from 2.1.1993 i.e. from the date of filing of the application till the date of realization. Learned Tribunal further directed that out of the total compensation amount and interest component, a sum of Rs. 20,000/- be kept in shape of unencumberable fixed deposit in any nationalized bank in the name of the claimant-Petitioner for a period of six years and balance be paid to the claimant in shape of cash.

4. Against the said award, the Appellant-Oriental Insurance Company Ltd. has filed the present appeal. Learned Counsel appearing on behalf of the Insurance Company submits that he has no grievance about the quantum of compensation awarded by the Learned Tribunal. Learned Counsel submits that at the time of accident the driver of the offending vehicle did not have valid licnece and to that effect Learned Tribunal has neither framed any issue nor given any specific finding. He has filed a Misc. Case bearing No. 652 of 2004 for acceptance of Annexure-1 as additional evidence which could not be produced before the Tribunal in spite of due diligence. The Petitioner tried at its level best to obtain the driving licence of the driver from the concerned authority, but the same was issued on 15.3.2004 i.e. after conclusion of trial. The further contention of the Learned Counsel for Insurance Company is that even though the Petitioner has taken a specific stand in paragraph-9 of its written statement regarding driving licence of the driver of the offending vehicle, Learned Tribunal has not framed any issue to that effect for which little opportunity was left for the Insurance Company to adduce any evidence.

5. Learned Counsel for the claimant-Respondent No. 1 submits that the amount awarded by the Learned Tribunal is not adequate and that the direction to keep the amount in fixed deposit is also not justified. Since the claimant sustained injuries on his person, the compensation amount should have been paid to him in cash.

6. Learned Counsel appearing on behalf of Respondent No. 2., the owner of the vehicle submits that the plea taken by the Insurance Company that the driver of the offending vehicle did not have valid licence at the time of accident was not at

all raised before the Learned Tribunal and, therefore, the prayer for right of recovery should not be considered. He further submits that Insurance Company has not discharged its burden by producing any document or adducing evidence before the Learned Tribunal in support of its plea that the driver of the offending vehicle did not possess valid licence at the time of accident. He also seriously objected to the contention raised in Misc. Case No. 652 of 2004.

7. It is not disputed by the parties that the offending vehicle was covered by valid insurance policy at the time of accident.

8. In that view of the matter, the Insurance Company is liable to pay the awarded amount of compensation to the claimant-Appellant. Coming to the quantum of the award, the contention of the Learned Counsel for the claimant that it is not adequate has not been substantiated by any sound reasoning. Apart from this, no appeal or cross-appeal has been filed by the claimant. This Court feels that the amount of compensation awarded by the Learned Tribunal is just and proper.

9. In the circumstances, Insurance Company is liable to pay the award amount to the claimant Respondent-1. This Court directs that the Insurance Company shall deposit the award amount within a period of eight weeks from the date of receipt of this order along with 6 per cent interest on the awarded amount from the date of filing of the claim petition before the Learned Tribunal till the date of realization. After the said amount is deposited, the Learned Tribunal; hall disburse the same to the sole claimant on proper identification.

10. The Insurance Company''s claim is that during the relevant time the driver of the offending vehicle did not have valid licence. But, the Insurance Company failed to prove its stand before the Learned Tribunal. At the same time the Learned Tribunal has not also framed any issue on that point even though in its written statement the Insurance Company took a specific stand in paragraph-9 regarding driving licence of the driver. To this stand of the Insurance Company, Learned Counsel for the claimant and owner of the vehicle have no denial. The Learned Tribunal has also not given any specific finding whether during the relevant time the driver of the offending vehicle had any valid driving licence. In that view of the matter, this Court directs that Insurance Company shall deposit the compensation amount with interest as indicated above before the Learned Tribunal and thereafter, if so advised, it may make an application before the Learned Tribunal to adjudicate the issue, relating to the driving licence of the driver. In the event such application is filed, Learned Tribunal shall deal with the matter in accordance with law. However, this Court makes it clear that in case it is found that the driver of the offending vehicle did not have valid licence at the time of accident, the Insurance Company will be at liberty to recover the same from the owner of the offending vehicle in accordance with law. This Court makes it clear that the Insurance Company shall make such deposit, as directed above, within eight weeks from today without waiting for any final settlement of the inter se dispute between the Insurance Company and the owner of the vehicle.

The Insurance Company is entitled to get back the statutory deposit of Rs. 7,500/- (Rupees seven thousand and five hundred) with the accrued interest from the Registrar (Judicial) of this Court on production of receipt in support of its payment of the award amount.

11. With the above observation, the appeal is disposed of.

12. In view of disposal of the appeal, Misc. Case No. 652 of 2004 stands disposed of.

13. Appeal disposed of.