

(2007) 06 OHC CK 0083

In the Orissa High Court

Case No : Writ Petition (C) No. 2440 of 2004

Oriental Insurance Company Ltd.

APPELLANT

Vs

Natabar Biswal, Pramod Kumar Biswal and Santosh Kumar
Biswal, being minors rep. by their father and natural
guardian and Sachinanda Sahu

RESPONDENT

Date of Decision : 20-06-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(4), 166

Citation : (2007) 06 OHC CK 0083

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N. Prusty, J.—This Writ Petition has been filed by the Petitioner/Insurance Company challenging the order-dated 23.12.2003 passed by the 1st. M.A.C.T." Mayurbhanj Baripada in M.A.C.T. Misc. case No. 67 of 1996.

2. Heard Mr. Roy, Learned Counsel for the Petitioner.

3. As it appears, on account of death of one Shrimati Naik, who died in a motor vehicle accident on 21.03.1996, the claimant/Opposite Parties filed an application u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 1,50,000/-. The claim was settled in Lok Adalat on 21.6.1997 for a sum of Rs. 85,000/- and accordingly the award /order was passed in favour of the claimants on conciliation. The compromise/conciliation was, made subject to confirmation of the driving licence by the Insurance Company within two months from the date of the compromise. In the said compromise, it was also agreed that in case the amount is not paid within two months from the date of passing of the award, it will carry interest at the rate of 12% per annum from the date of application till the date of payment. As such, as per the terms of compromise, the Insurance Company was to verify and/or produce the driving licence/report on driving licence within two months. It has been alleged by the Petitioner/ Insurance

Company that on verification of the driving licence of the driver of the offending vehicle, the same was found to be a fake one and accordingly an application was filed by it for setting aside the compromise arrived at in the Lok Adalat and considering the submissions advanced on behalf of the Petitioner, the said compromise was set aside by order dated 10.09.1997. Thereafter, the claimant/Opposite Parties 1 to 3 filed a petition on 03.01.1997 (1998) to recall the Order Dated 10.09.1997 permitting the Petitioner/Insurance Company to rescind from the compromise and prayed for a direction to the Insurance company to deposit the entire awarded amount as agreed to between the parties in the Lok Adalat. A bare reading of the Writ Petition clearly indicates that the date on which Insurance Company filed petition before the Learned Tribunal to rescind from the compromise has not been mentioned anywhere and also copy of the order sheet of subsequent dates including the order whereby the said petition was allowed has not been filed along with the Writ Petition. It is not known as to whether any application to recall the compromise was filed before expiry of the period for verification of the Driving licence i.e., two months or not however, the order permitting the Insurance Company to rescind from the compromise was passed after expiry of two months i.e. on 10.09.1997 as stated in the Writ Petition.

4. The main ground of challenge of the impugned order in this Writ Petition is that once the Tribunal has allowed the petition for setting aside, the compromise and thereafter recalling the said order as well as directing the Petitioner to pay the amount is uncalled for. It was also urged that since the compromise was a conditional one, the Tribunal committed gross error of law in directing the Petitioner to pay the amount. The Petitioner has also ascertained that the driver of the offending vehicle was not having a valid driving licence at the time of the accident and the driving licence which was produced before the investigating agency is a fake one. Hence this Writ Petition has been filed by the Petitioner for a direction to the Tribunal to proceed with the regular trial of the case giving opportunity to the Petitioner to establish its stand that the driver of the offending vehicle did not possess a valid and effective driving licence on the date of the accident and as such it is not liable to pay the compensation amount, indemnifying the owner of the vehicle for violation of the policy condition.

5. From the impugned Order Dated 21.06.1997, it is found that on conciliation an award of Rs. 85,000/- was passed in favour of the claimant. There were certain terms and conditions in the said compromise for compliance by the insurer, which is mainly for verification of the Driving Licence. In the impugned order, the Learned Tribunal after a thorough discussion on the subject as well as taking into consideration of the various Judgments of this Court as well as of the Supreme Court specifically found that the Insurance Company; (Petitioner) has neither complied with the conditions nor paid the compensation amount to the claimant/Opposite Parties as decided in the Lok Adalat. The Petitioner has not also filed either the policy of Insurance or Driving Licence within the stipulated period, but filed an application to recall the compromise for non-fulfillment of the condition i.e. since the driver of the offending vehicle was not having a valid driving

licence, which is violative of the terms and conditions of the policy and to have regular trial. The claimant's were in no way responsible for non-production of the driving licence by the owner or the driver of the offending vehicle or the Insurance company itself. Learned Tribunal, with the above findings observed that the Insurance Company is liable to pay the compensation amount in accordance with the terms and condition settled in the Lok Adalat.

6. I have heard Learned Counsel for the parties at length. Perused the materials on record. So far as driving licence is concerned, not possessing a valid driving licence amounts to breach of policy condition, as has been held by the Apex Court in a catena of decisions.

7. In this regard, Hon''ble supreme Court in its decision reported in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., has been pleased to hold:

The position can be summed up thus: The insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured- if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation third parties on account of the certificate of insurance issued shall be titled to recover from the insured the account paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid licence. Learned Counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer in default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimants' third parties) from the insured person.

8. In the case of Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others, , it has been held by the Supreme Court that:

For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the Insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimant. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing Court shall take assistance of the concerned Regional Transport Authority.

9. As such in consonance with the ratio of the decision of the Hon''ble Supreme Court, even if not possessing a valid driving licence by the driver of the vehicle is

a breach of policy condition, the poor claimant should not suffer for such breach of policy condition, if any. It is incumbent upon the insurer to pay the compensation first to the claimant and accordingly the Appellant Insurance Company ought to be directed to pay the amount compensation, with liberty to realize the same from the lower of the offending vehicle, in accordance with law.

10. Admittedly the accident occurred on 21.03.1996 and even though in the meantime more than ten years have passed the poor claimants have not received anything towards compensation till date As such the claimants cannot be denied of their legitimate compensation on the ground of non-production of, the driving licence by the Petitioner. As per the terms of compromise, it is only the Insurance Company, Who was to produce the driving licence. Further more, even if the driving licence is not found to be a genuine/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.

11. In view of the above, as per the settled principles of law, keeping in view the decision of the Supreme Court vis-avis Section 149(4) of the Motor Vehicles Act, the Insurance Company is liable/bound to pay the amount of compensation along with interest at the rate of 12% per annum in terms of the compromise, since the settled amount of Rs. 85,000 /- has not been paid within months from the date of compromise/award and the entire amount of compensation is deposited along with up-to-date accrued interest before the Tribunal as directed above, the Petitioner / Insurance- Company shall have the right to proceed against the owner of the offending vehicle for realization/recovery 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 truck on the date and time the accident was caused as well as shall have the liberty to attach 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. Accordingly, the Petitioner/Insurance Company is directed to deposit the entire awarded amount of Rs. 85,000/- along with interest at the ate of 12% per annum from the date of filing of the case till the date of actual deposit before the Tribunal, within two months hence and immediately after such deposit the amount shall be disbursed in favour of the claimants as would be determined by the Tribunal. 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 as would be determined by the Tribunal.

12. 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.

13. The writ application is accordingly dismissed.

14. It is made clear that if so advised, after the amount is deposited in the tribunal, the Petitioner is at liberty to initiate appropriate proceeding against the owner of the vehicle violation of the terms and conditions of the policy as indicated above and if any proceeding for recovery is initiated by the Insurance Company, tire same shall be considered on basis of the evidence adduced in that proceeding.

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