(1997) 11 OHC CK 0005

In the Orissa High Court

Oriental Insurance Company Ltd. APPELLANT

Vs

Uma Charan Bisoy and Others RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Citation : (1998) 2 ACC 230 : (1998) 85 CLT 41

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Judgement

Pradipta Ray, J.—The Insurance Company has preferred this appeal against the judgment and award dated June 17,1994 passed by the 2nd Motor Accident Claims Tribunal, Berhampur (Southern Division) in M.A.C. No. 512/92 (279/92). By the impugned award the Tribunal has awarded a compensation of Rs. 96,000/- and interest thereon in favour of the claimant-respondents 2 to 7.

2. At the time of admission of this appeal it was specifically mentioned mat the appeal was admitted on the ground that the driver had no licence renewed on the date of the accident. Vital question to be considered in this appeal is whether the driver of the offending vehicle was having a valid driving licence on the date of the accident.

3. It has been repeatedly pointed out that it is incumbent on the Tribunal under the Motor Vehicles Act to satisfy itself about the existence of a valid driving licence of the driver of the offending vehicle. In the present case the Tribunal has merely relied upon the certified copy of the seizure list, Ext. 4, which recorded that the driver of the offending vehicle was having a valid licence on the date of the accident.

4. It does not appear from the judgment of the Tribunal that it verified the original driving licence of the driver to satisfy itself about its existence on the material date.

5. In this appeal the Insurance Company has filed an application for permission to produce the information-sheet issued by the Licensing Authority (M.V.

Bhubaneswar) regarding the Driving Licence No. 471/82(O)of Sri Rankanidhi Kar, the driver. It appears from the said information sheet that the driving licence to drive transport vehicle was not renewed from May 14,1991 to August 26,1991. Accident took place on July 27,1991. As the said information-sheet has a material bearing on the issue whether the driver had a valid driving licence on the date of the accident, I allow this application and permit the Insurance Company to produce the same, at the time of hearing.

6. Learned Advocate appearing on behalf of respondent No. 1, the owner of the vehicle, has produced the original Driving Licence No. 471/82 before this Court. From the said original driving licence it appears that on April 12,1991 the said driving licence was renewed upto April 14,1994 with effect from April 15,1991 by the Licensing Authority, Phulbani. Thus there is an apparent discrepancy between these two documents and it is necessary to find out the factual truth for the purpose of fixing liability to pay the awarded compensation.

7. It has now been settled by the Supreme Court in United India Insurance Co. Ltd. Vs. Gian Chand and others, , that if the owner had handed over the vehicle to a driver not having valid driving licence, the Insurance Company will be absolved of its liability and the owner will be liable to pay the compensation awarded. Thus existence of a valid driving licence is a necessary finding before fastening liability. In view of the aforesaid discrepancy between the two documents it is not possible for this Court to come to any definite conclusion without any further evidence.

8. Accordingly it is necessary to send the case back on remand to the Tribunal for determination of the issue whether the driver had a valid driving licence on the date of the accident. All the parties will be given opportunity to adduce evidence on the said question. If it is found that the driver had no valid driving licence the owner will be liable to pay the compensation, but if it is established that the driver had a valid driving licence on the material date, the Insurance Company will remain liable to satisfy the award. All other findings are affirmed. The only question to be determined on remand is about existence of a valid driving licence and fixing liability to pay compensation on the basis of such finding. The Tribunal will dispose of the case within a period of three months from the date of arrival of the records.

9. The Insurance Company has deposited Rs. 25,000/- in this Court at the time of filing appeal. The claimant-respondent No. 2 (the mother) is permitted to take Rs. 10,000/- out of that amount lying deposited in the High Court without prejudice to the rights and contentions of the parties. Registry will pay the same amount to respondent No. 2 on proper identification and will return the balance amount in the Account to tine Insurance Company. If it is found that the Insurance Company is not liable to pay the compensation, it will be at liberty to take steps for recovery of the said Rs. 10,000/- from the owner.

10. The original information-sheet produced in this Court on September 23, 1997

will be returned to Mr. R.B. Mohapatra learned Advocate for the Insurance Company to enable him to produce the same before the Tribunal. It is recorded that a xerox copy of the same is already there on record.

11. The appeal is allowed in part to the extent indicated above and the claim case is sent back for reconsideration in accordance with the direction of this judgment.

Let the records of the case be sent down and the present order communicated without any delay.

