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**(2002) 12 OHC CK 0020**  
**In the Orissa High Court**  
**Case No : M.A. No. 1245 of 1999**

Padmabati Devi

APPELLANT

Vs

Dasarathi Sahu and Another

RESPONDENT

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**Date of Decision :** 16-12-2002

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 149(2), 173(1), 2(21)

**Citation :** (2003) 2 ACC 400 : (2004) ACJ 1071 : (2003) 1 OLR 251

**Hon'ble Judges :** Pradipta Ray, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Pradipta Ray, J.—Duryodhan Das stated to be the owner of a small hotel was travelling in a Trekker bearing registration No. OR 02-A 4664. The vehicle was moving in a high speed. The driver lost control and the vehicle dashed against a roadside tree. Three persons including Duryodhan Das were killed on the spot. The widow and son of the deceased Duryodhan filed a claim case being M.A.C.T. Misc. Case No. 1 of 1993 of the court of the Third Motor Accidents Claims Tribunal, Bhubaneswar, claiming a compensation of Rs. 1,50,000/-.

2. The owner of the offending Trekker (respondent No. 1 in this appeal) did not appear in the Tribunal. National Insurance Co. Ltd., the insurer, contested the claim by filing a written statement contending, inter alia, that the driver of the offending Trekker had no valid driving licence and that the vehicle was not covered by the insurance policy.

3. The Tribunal found that the deceased was having a monthly income of Rs. 1,000/- and his contribution to the family was Rs. 660/-. The deceased was 70 years old at the time of his death. The Tribunal applied a multiplier of 5 and awarded a total compensation of Rs. 46,600/-. The Tribunal further found that the driver of the vehicle was authorised to drive light motor vehicle (private). It took the view that a driver holding a licence for driving a light motor vehicle was

not authorised to drive a Trekker and accordingly held the owner of the vehicle liable to pay such compensation. During the pendency of the claim case in the court below claimant No. 2, the son of the deceased died.

4. Being aggrieved by the judgment and award of the Tribunal, the widow of the deceased has filed this appeal. Her main grievance in appeal is that the Tribunal should have held the insurance company liable to pay the compensation. In spite of service of notice respondent No. 1, the owner of the vehicle has not entered appearance.

5. It has been submitted by the learned advocate for the appellant that the Tribunal committed error in taking the view that a driver having a licence to drive light motor vehicle is not authorised to drive a Trekker carrying passengers and in any event in view of the judgment of the Apex Court in *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, insurance company is to satisfy the claim of the third party subject to its right to get reimbursement from the owner of the vehicle.

6. Learned advocate for the respondent No. 2, the insurer, has contended that the present appellant cannot be aggrieved inasmuch as the Tribunal has awarded compensation in her favour. The owner of the vehicle might have felt aggrieved but he has not filed any appeal.

Learned advocate for the insurer has referred to a Full Bench decision of the Madhya Pradesh High Court in *New India Assurance Co. Ltd. Vs. Rafeeka Sultan and Others*, in support of the aforesaid submission. In *Rafeeka Sultan (supra)*, the Full Bench was considering the insurance company's right of appeal. While dealing with the said question it has been held that the "person aggrieved" is not the same thing as the "person interested" and by way of illustration it has been stated in para 17 of the judgment:

"...The claimant can be aggrieved by the award, if it is less or his claim petition is rejected..."

In the said decision the High Court was not considering the claimant's right of appeal and aforesaid illustrative observation made therein cannot be accepted as a statement of law laid down by the said Full Bench of Madhya Pradesh High Court.

7. This court in *Braja Kishore Mohanty v. M.C. Shyamasundar* 1989 ACJ 450 (Orissa), overruled a similar objection of the insurance company that a claimant was not entitled to file an appeal against an award holding the owner liable to pay the assessed compensation.

8. Relying upon the decision of the Supreme Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC), this court in its judgment in *Pandab Majhi v. Dasarathi Raut*, M.A. No. 447 of 1984, decided on 14.2.1996, has held:

"(8) It has thus been recognised by the Supreme Court that it is not enough to award compensation, but, it is also to be ensured that the victim is able to get the compensation. A claimant can feel assured of getting compensation awarded only if the insurance company is found liable. Judicial notice can be taken of the hard fact, that where compensation is to be realised from a private owner of the offending vehicle in most cases the same remains a paper compensation or involves a fresh exercise of chasing the owner through time-consuming, expensive and tiresome process of execution.

(9) Statute has provided for compulsory insurance coverage, has imposed the liability on the insurance company for protection of the accident victims and has clothed them with regard to getting the compensation, if any, from such insurance company. The claimants can definitely feel aggrieved if their entitlement to get compensation from the insurance company is denied by the judgment. When the owner is held liable to pay compensation it ordinarily remains just a possibility of getting compensation whereas if the insurance company is found to be liable it becomes a certainty.

(10) Accordingly, a claimant can legitimately feel aggrieved if the insurance company is not held liable for the compensation. However, while considering such appeal, court should be careful and vigilant that the claim is not an outcome of a collusion between the claimant and the owner."

So, the submission that claimant cannot have any legitimate grievance cannot be accepted.

9. The driver of the offending vehicle had valid driving licence to drive light motor vehicle. "Light motor vehicle" has been defined in Section 2(21) of the Motor Vehicles Act, 1988 as "a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms". The offending vehicle is a Trekker and it was for the insurance company to show that the gross vehicle/unladen weight of a Trekker was/is more than 7500 kilograms. In the present case, there is no such evidence that unladen weight of a Trekker was more than 7500 kilograms at the relevant point of time.

10. It is further pointed out that the Trekker was carrying passengers although the driving licence was for driving a light motor vehicle (private). Use of a vehicle cannot change the nature and character of a vehicle. Trekker is used for carriage of passengers or goods. Carriage of passengers does not take the offending vehicle outside the definition of the light motor vehicle. Light motor vehicle includes a transport vehicle gross vehicle weight or unladen weight of which does not exceed 7500 kilograms. Unless it is proved that the offending Trekker was not a light motor vehicle, the driving licence cannot be held to be invalid. It is submitted that the driver of the offending vehicle was not authorised to drive the offending vehicle as it was carrying passengers for hire. This court has consistently held that absence of endorsement permitting to drive a light motor

vehicle with passengers does not make the driver incompetent or unauthorised to drive a light motor vehicle. The Madhya Pradesh High Court in *New India Assurance Co. Ltd. Vs. Munni Bai and Others*, ; *Koshalya Bai v. Lachhoo Devilal* 2001 (2) TAC 109 and *United India Insurance Company Limited, Mysore Vs. Shivanna and Others*, , have taken similar view.

11. The driving licence of the driver has been exhibited. It shows that he was authorised to drive light motor vehicle. The Tribunal has committed error in taking the view that the driver of the offending vehicle had no valid driving licence. As this court holds that the driver of the offending vehicle had valid driving licence, the judgment of the Tribunal holding the owner liable to pay compensation is to be set aside.

12. The learned advocate for the respondent No. 2, the insurance company, has submitted that the Tribunal committed error in awarding interest at the rate of 12 per cent per annum from the date of the claim petition. The claim petition was filed on 2.1.1993 and the rate of interest at the time was 12 per cent per annum. The rate of interest has been reduced since 2000. This court is of the view that from 2000 the rate of interest should be reduced to 9 per cent per annum.

13. For the foregoing reasons, the judgment and order of the Tribunal holding the owner of the vehicle liable to pay compensation is set aside and it is held that the insurance company is liable to pay compensation as determined by the Tribunal with 12 per cent interest from the date of filing of claim petition till end of 1999 and, thereafter, from 1.1.2000 the rate of interest will be 9 per cent per annum till the date of deposit of the amount in the Tribunal. The insurance company is directed to deposit the compensation amount along with the interest by 15.1.2003.

Out of the compensation amount a sum of Rs. 40,000/- (rupees forty thousand) will be kept in a fixed deposit in the name of the claimant-respondent for a period of five years and the balance amount will be paid to her. Quarterly interest will be payable from the fixed deposit.

14. Misc. appeal is thus allowed to the extent indicated above.