
(1991) 03 OHC CK 0006
In the Orissa High Court
Case No : Misc. Appeal No. 164 of 1986

Prasanna Kumar Mitra

APPELLANT

Vs

Pravati Khatei and Others

RESPONDENT

Date of Decision : 15-03-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1991) ACJ 1046 : AIR 1991 Ori 312

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : S.S. Basu, for the Appellant; B.P. Ray and R.N. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The owner of the vehicle is the appellant and assails the order of the Motor Accidents Claims Tribunal where-under the Tribunal has determined the compensation to the tune of Rs. 1,00,000/- and has directed that owner should pay Rupees 50,000/- and the insurer should pay Rupees 50,000/-.

2. In the claim petition it was alleged that on 11-10-1981 at 5 p.m. while the deceased was coming on foot to Chandrabhaga on the Marine Drive Road, the offending vehicle bearing registration number O.S.P. 671 came at a high speed and dashed against the deceased who fell down unconscious and later died on his way to the hospital. The owner as well as the insurer filed their respective objections before the Tribunal stating therein that the deceased in fact forced his entry into the vehicle and he not being a passenger for hire or reward at the time when the accident took place was not entitled to claim any compensation under the provisions of the Motor Vehicles Act.

3. The Tribunal framed 4 issues and on consideration of the materials before it discarded the plea of the owner as well as of the insurer and held that the accident took place while the deceased was walking on the road on account of

rash and negligent driving of the offending vehicle. On the question of quantum of compensation, taking into account the earning of the deceased on the fateful day, the age of the deceased as well as all other relevant factors, the Tribunal assessed the amount at Rs. 1,00,000/-. But as the liability of the insurer u/s 95 of the Act was to the extent of Rs. 50,000/-, the Tribunal directed that out of Rs. 1,00,000/-Rs. 50,000/- would be paid by the insurer and balance sum of Rs. 50,000 / - would be paid by the owner. It is this award which is being challenged in this appeal.

4. At the outset Mr. Basu appearing for the owner-appellant challenges the correctness of the finding of the Tribunal that the accident occurred while the deceased was walking on the road. According to him, the F.I.R. on the basis of which a criminal case had been initiated and the materials produced before the criminal Court have not been considered at all and in total ignorance of said materials, the Tribunal erroneously came to the conclusion that the accident occurred while the deceased was walking on the road and this conclusion should not be sustained. I am unable to accept this submission of the learned counsel. The Tribunal has fully considered the evidence produced by the claimants in support of their case that while the deceased was going on the road, the accident occurred as the offending vehicle came with a high speed and dashed against the deceased. This finding being based on a proper appreciation of the evidence adduced in the case, it cannot be said that the said finding is erroneous in any manner. In that view of the matter, the finding of the Tribunal on this score is affirmed and the submission made by Mr. Basu is rejected.

5. Mr. Basu, the learned counsel, then urges that the insurer not having produced the policy in question and the claimants having made a claim both against the owner as well as the insurer, it must be held that the insurer had accepted a larger liability and, therefore, must be bound to pay the entire compensation. Mr. Mohanty appearing for the insurer, on the other hand, contends that the owner not having taken that plea specifically, it was no obligation on the part of the insurer to produce the policy and non-production of policy would not raise an inference that the insurer had taken a larger liability. This question by now has come up for consideration before different High Courts and a Bench of the Allahabad High Court in the case of National Insurance Co. Ltd. Vs. Narendra Kumar and Others, has held that (at page 401) :--

".....When the claimants asked for a larger amount of compensation and claimed it against all respondents it was the duty of the Insurance Company to disclose the amount of the insurance policy and bring on record the policy itself. The plea should have been clearly taken in its written statement if it wanted to resist the claim as stated by the petitioner..."

In that particular case neither the owner nor the insurer had disclosed the amount of policy taken by the owner of the truck and the insurance policy had also not been brought on record. But putting the burden on the insurance company the High Court held that the insurer was liable to pay the entire

compensation. To the same effect is the judgment of a learned single Judge of Delhi High Court in the case of Satya Wati Pathak Vs. Hari Ram and Others, . A learned single Judge of this Court in Misc. Appeal No. 150 of 1986 (Oriental Fire and General Insurance Co. Ltd. v. Mrs. Santilata Ray and another) disposed of on 10-11-1989 has also accepted the aforesaid legal position and by drawing adverse inference for non-production of the policy has held the insurer to be liable for payment of the entire compensation. The Supreme Court in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , while interpreting Section 95(2)(b) of the Motor Vehicles Act, observed (at page 723):--

".....This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reason known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in claim petition that its liability is not in excess of the statutory liability, it should file a copy of the insurance policy along with its defence....."

In view of the aforesaid authoritative pronouncements of the different Courts including that of the Supreme Court there is no escape from the conclusion that the insurer would be held liable to pay the entire compensation money on a conclusion that it had accepted a higher liability than that provided in the statute. It may be mentioned at this stage that even in this Court, the insurer had not taken any steps to produce the original policy to indicate that it had not taken any higher liability. Accordingly, the second contention of the learned counsel for the appellant succeeds and the amount awarded by the Tribunal so far as fixing liability on the owner appellant is quashed and it is directed that the insurer (respondent No. 5 in this appeal) is liable to pay the entire compensation money.

6. This appeal is accordingly allowed. There will, however, be no order as to costs.