

(2002) 10 OHC CK 0048

In the Orissa High Court

Case No : M.A. No"s. 390 and 427 of 1996

Regional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Bendi Venkata Rao and Another

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

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

Citation : (2003) 1 ACC 249 : (2004) ACJ 820 : (2002) OLR 705 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.D. Das, for the Appellant; G.K. Nanda and L. Pradhan, for the Respondent

Judgement

A.S. Naidu, J.—Miscellaneous Appeal No. 390 of 1996 has been filed u/s 173 of the Motor Vehicles Act by the Regional Manager, Oriental Insurance Co. Ltd. impugning the judgment passed in M.A.C. No. 22 of 1994 (396 of 1993) by the Second M.A.C.T. (S.D.), Berhampur dated 17.4.1996 mainly on the ground that the driver of the offending vehicle did not possess a valid or effective driving licence on the date of the accident. According to Mr. Das, learned counsel for the appellant, since the vehicle was being driven by a person without having a valid driving licence and was thus not authorised to drive the vehicle when the accident occurred, the insurance company is not liable to pay any compensation and it is a fit case where the appeal should be allowed and the impugned judgment should be set aside.

Miscellaneous Appeal No. 427 of 1996 has been filed challenging the very same judgment as impugned in the aforesaid Miscellaneous Appeal No. 390 of 1996 on the ground that the Claims Tribunal did not consider the evidence in its proper perspective and the award of compensation of Rs. 22,000 was insufficient and that the Claims Tribunal has also not taken into consideration the future loss of employment of the appellant, while quantifying the compensation.

Both the appeals involve same facts and points of law and as such the same

were heard together and are disposed of by this common judgment.

2. So far as Misc. Appeal No. 390 of 1996 is concerned, Mr. S.D. Das, learned counsel appearing for the appellant insurance company, forcefully submitted that the driver of the offending vehicle did not possess a valid or effective driving licence on the date of the accident in question and hence there was a breach of the conditions of the policy. It was further submitted by him that as the conditions of the policy were not properly adhered to, the insurance company is not liable to pay any compensation to the claimant and the same should be saddled on the owner of the vehicle. On the other hand, Mr. Pradhan appearing for the claimant-respondent relying upon Section 149(2) of the Motor Vehicles Act submitted that the duty of the insurance company is to satisfy the award passed for the persons insured against third party risk, and this court should not interfere with the order.

3. There is no dispute with regard to the fact that the offending vehicle bearing the registration No. OR 07-1439 was insured with the appellant insurance company and the policy was also valid on the date of accident. But then, the law is well settled that if any of the terms and conditions of the insurance policy is violated the insurance company is not liable to pay compensation. In the present case, accident took place in the year 1992. The claimant who is a poor man has undertaken the pain and suffering due to the accident. He has also become disabled to a certain extent. The non-fulfilment of any of the terms and conditions of the insurance policy being a contractual violation, it would be open to the insurance company to realise the awarded amount from the owner of the vehicle, but the poor claimant should not be deprived of the compensation to which he is otherwise entitled. Taking into consideration all these facts and in the light of the decision of the Supreme Court in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , I direct that the insurance company shall pay the entire compensation amount to the claimant as per the award. So far as the liability of the insurance company vis-a-vis the owner is concerned, I feel that it is a fit case where the matter should be remitted back to the Tribunal for an effective adjudication as to whether the driver of the offending vehicle was possessing a valid and effective licence at the time of the accident. For determining the said issue, the Tribunal shall cause notice to the insurance company as well as to the owner of the offending vehicle and shall decide the same in their presence. Since the presence of the claimant is not required for adjudication of the said issue, no notice need be issued to him. After notice, the Tribunal shall proceed with the case and decide as to whether the driver of the offending vehicle was possessing a valid and effective driving licence and whether there was any breach of the terms and conditions of the policy and as to whether the compensation awarded is to be paid by the insurer or the owner of the offending vehicle. If it is found that due to breach of the terms and conditions of the insurance policy the insurance company is not liable to pay any compensation, it would direct the owner to reimburse the compensation amount to the insurance company. If the amount is not reimbursed by the owner of the

vehicle, it would be open to the insurance company to realise the entire amount along with the interest thereon paid by it to the claimant from the owner of the offending vehicle. It is further made clear that if after receipt of notice the insurance company or the owner of the offending vehicle wants to file any other document or adduce any other evidence in support of their respective cases, such liberty should be given to them. In view of the fact that the case relates to the year 1993, I direct that the Tribunal shall dispose of the case as expeditiously as possible.

4. Both the miscellaneous appeals are disposed of with the aforesaid modification of the impugned judgment and the directions/observations made above.

Parties to bear their own costs.