
(2007) 05 OHC CK 0045

In the Orissa High Court

Regional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Misin Jena and Others

RESPONDENT

Date of Decision : 02-05-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2008) ACJ 1926 : (2007) 1 OLR 739

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Judgement

N. Prusty, J.—This appeal was filed in the year 2000 challenging the award dated 15.01.2000 passed by the learned Additional District Judge-cum-MACT, Sambalpur in Misc. (Accident) Case No. 151/8 of 1998-99 whereby the application for interim compensation filed by the claimants u/s 140 of the M.V. Act was disposed of directing the Insurer/appellant to pay an amount of Rs. 50,000/- to the claimants/ respondents as no fault liability/interim compensation. In this case vide order dated 26.04.2002 notice was issued to the respondents indicating therein that the appeal shall be disposed of at the stage of hearing on admission and the notice issued on all the respondents have been served.

2. Heard Mr. S.D. Das, learned Senior Advocate for the appellant, Mr. D.P. Sahoo, learned Counsel for the respondent No. 4. None appeared on behalf of respondent Nos. 1 to 3 in spite of valid service of notice.

3. It is contended on behalf of the appellant that the learned Tribunal has committed an illegality in directing the insurer to pay the amount of Rs. 50,000/- u/s 140 of the M.V. Act, even though the appellant-insurer took a stand in the written statement that the driver of the offending vehicle had no valid driving licence on the date and time of accident and since the condition of the policy has been violated by the owner of the vehicle the insurer is not liable to pay the amount of compensation indemnifying the owner of the vehicle. The interim compensation awarded u/s 140 of the M.V. Act is subject to the final decision in the main claim case. It is now well settled that a dispute with regard to breach of

policy conditions by the insured is a matter to be adjudicated between the insured-owner and the insurer and that such dispute will not exonerate the insurer from indemnifying the insured to the extent of compensation awarded under the Motor Vehicles Act in favour of the claimants. In the event, the appellant-insurer proves breach of policy condition by the insured-owner during the course of hearing of the main claim case as required under law, it is open for the learned Tribunal to pass appropriate order for recovery of the compensation amount paid by the insurer to the claimants from the insured.

4. In view of the above this appeal is devoid of any merit but in the circumstances, is disposed of with the following directions:

1. The Insurance Company is at liberty to raise such defence as permissible in law in the main claim case.

2. In case the Insurance Company succeeds in proving that there are conscious breach of policy condition by the insured-owner of the vehicle, the Tribunal while directing the Insurance Company to make payment of the compensation amount which may be awarded in the final judgment to the claimants, may direct for recovery of the said amount by the appellant-Insurance Company from the owner of the said vehicle/insured, in accordance with law.

3. It is also directed that the claimant-respondents will file an undertaking by way of an affidavit stating that they will prosecute the main claim case and will not abandon the same.

5. The appellant Insurance Company is directed to deposit the entire awarded amount of Rs. 50,000/- before the Tribunal within a period of four weeks hence and on furnishing a certificate to the said effect, it is at liberty to take refund of Rs. 25,000/- which has been deposited by it towards statutory deposit in this case along with accrued interest thereon on proper application. However, it is made clear that the interest part shall be taken care of by the learned Tribunal in the final award to be passed in the main case u/s 166 of the Motor Vehicles Act, keeping in view the date of deposit of the interim compensation amount of Rs. 50,000/-.

6. The appeal is accordingly disposed of.

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