

(2005) 01 OHC CK 0072

In the Orissa High Court

Case No : Miscellaneous Appeal No. 596 of 2001

The Divisional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Kallachand Baske and Others

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Citation : (2005) 01 OHC CK 0072

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : G.P. Dutta, for the Appellant; S.N. Kar, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This appeal is directed against the judgment and award passed by the Commissioner for Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack in W.C. Case No. 386-D of 1998 directing the Appellant to pay compensation of Rs. 1,70,168/- along with interest at the rate of 12% per annum to the claimants.

2. The claimants are the parents of the deceased Durga Baske. The case of the claimants is that the deceased was working as helper in a truck bearing registration No. OR-0-17-6287. On 19.5.1998 in the night the said truck was coming from Chandikhol to Paradeep and at Biswalgada the driver stopped the vehicle. The deceased got down from the truck to check the tyre pressure and while doing so, the driver suddenly drove the truck ahead as a result of which the deceased remained under the truck and succumbed to the injuries on the spot. The further case of the claimants is that the deceased at the time of accident was working as helper and comes within the definition of "Workman" under Workmen's Compensation Act and was aged about 19 years. It is also the case of the claimants that the deceased was getting Rs. 1600/- as wages per month excluding his daily allowance for food.

3. Owner of the vehicle did not contest the proceeding and was set ex parte. The

present Appellant filed written statement denying its liability and contested the case.

4. The Commissioner for Workmen's Compensation framed four issues and found that the deceased was a workman within the meaning of Workmen's Compensation Act and the accident took place out of and in course of his employment as helper in the truck. It was also found that the vehicle in question had a valid insurance on the date of the accident. Taking 50% of his wage for the purpose of computation of compensation, the Tribunal awarded Rs. 1,70,168/- towards compensation and the liability was fixed on the present Appellant.

5. Shri G.P. Dutta, the learned Counsel appearing for the Appellants challenged the award basically on two grounds. The first ground taken by the learned Counsel for the Appellant is that the driver of the vehicle did not have an effective driving license on the date of accident and, therefore, the Insurance Company is not liable to pay compensation. Relying on the decision of the Apex Court in the case of Oriental Insurance Co. Ltd. v. Nanjappan and Ors. reported in AIR 2004 SCW 952 Shri Dutta further contended that even if the Insurance Company is liable to pay compensation it should be given an opportunity to recover the same from the owner in terms of the said judgment. The learned Counsel appearing for the claimants, on the other hand, submitted that the question as to whether the driver had an effective driving license was also raised before the Commissioner for Workmen's Compensation and on analysis of the evidence, it was found that the driver had an effective driving license on the date of the accident.

6. The question as to whether the driver had a valid driving license on the date of accident or not is the subject matter of Issue Nos. 3 and 4. Shri Dutta, the learned Counsel appearing for the Appellant referring to the evidence of O.P.W. No. 1 contended that while verifying the police papers it was found that the driving license had been issued from Madhya Pradesh and accordingly verifications were made. It was further contended that the Madhya Pradesh had only one office at Raipur and on verification from the said office it was found that the driver on the date of accident did not have an effective driving license. From the intimation given by the licensing authority of Raipur which has been exhibited it appears that the said licensing authority intimated the Appellant that no such license had been issued from that office. The Commissioner did not accept the plea of the Appellant on the ground that there being no mention in the driving license with regard to the place of issuance, there was no occasion for the Insurance Company to verify the same from the office of R.T.O., Raipur. The specific case of the Appellant is that in the driving license it is clearly mentioned that the same had been issued from the State of Madhya Pradesh and in Madhya Pradesh at the relevant time only one Regional Transport Office at Raipur was existing and, therefore, the license could not have been issued from any other place except Raipur. There appears to be some force in the contention of the learned Counsel appearing for the Appellant. Even if the contention of the

learned Counsel for the Appellant is accepted, the insurer cannot escape from the liability of payment of compensation in view of the decision of the Apex Court. In the case of *Oriental Insurance Co. Ltd. v. Nanjappan* (supra) the Apex Court held as follows:

The insurer is liable to pay the quantum of compensation fixed by the Tribunal to the claimants at the first instance and recover it from insured. For the purpose of recovering the same from the insured. Owner of vehicle the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

7. I am, therefore, of the view that the insurer-Appellant is liable to indemnify the award amount but shall have the right to recover the same in terms of the judgment of the Apex Court referred to above.

8. The second ground on which the learned Counsel for the Appellant challenged the award is that at the time of passing the award the Commissioner had no jurisdiction to direct payment of interest. It is contended that only when the insurer fails to deposit the award amount within the time, separate proceeding is to be initiated for imposition of interest. Undisputedly after the award was passed, the amount of compensation has already been deposited before this Court. In view of the above, the second ground taken has become academic and need not be answered.

9. In view of the discussions made, I do not find any reason to interfere with the award but direct that the Commissioner for Workmen's Compensation shall issue notice to the owner to furnish security for the entire amount. If the insured fails to furnish the security, the vehicle in question shall be attached as a part of the security and the commissioner shall also direct realization of the amount by disposal of the security to be furnished by the insured or from any other property or properties of the insured. This exercise should be done as early as possible so that the claimants do not suffer. It is further directed that if within a period of four months the exercise is not complete, the award amount shall be released in favour of the claimants but the Commissioner shall be free to proceed with the case for recovery of the amount from the owner.

The appeal is accordingly disposed of.